

**SUPERIOR
SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-

DATE: March 21, 2013

IN THE PRESENCE OF: THE HONOURABLE MARK SCHRAGER, J.C.S.

IN THE MATTER OF THE RECEIVERSHIP OF:

EFFIGI INC., a legal person incorporated under the laws of Canada, having its principal place of business at 1155 Autoroute Chomedey, in the City and district of Laval, Province of Québec H7W 5J8

("Bankrupt")

- and -

RICHTER ADVISORY GROUP INC., a legal person incorporated under the laws of Canada, having a place of business at 1981 McGill College, Suite 1100, in the City and district of Montréal, Province of Québec H3A 0G6

("Trustee" and "Proposed Receiver")

- and -

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, a legal person incorporated under the laws of the Province of Ontario, having a place of business at 1 Place Ville-Marie, Suite 2022, in the City and district of Montréal, Province of Québec H3B 2C4

("Petitioner")

JUDGMENT

The Court
(Commercial-Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-

DATE: ●

PRESIDING : THE HONOURABLE MME/MR. JUSTICE, J.S.C.

IN THE MATTER OF THE RECEIVERSHIP OF:

●

Debtor

-and-

●

Petitioner

-and-

●

Receiver

ORDER APPOINTING A RECEIVER

[1] (Section is seized with a Motion for the Appointment of a Receiver under the provisions of sections 243 of the *Bankruptcy and Insolvency Act*, dated March 20, 2013, presented by Petitioner, Wells Fargo Finance Corporation Canada Inc. a secured creditor of Bankrupt, Effigi Inc.;

~~[1] ON READING~~ Seeing the allegations of Petitioner's Motion to Appoint a Receiver (the "Motion") pursuant to Article 243 of the Bankruptcy and Insolvency Act (the "BIA"), the affidavit and the exhibits, the Exhibits in support thereof;

~~[2] SEEING~~ the service of the Motion;

~~[3] SEEING~~ the submissions of Petitioner's attorneys and the submissions of •;

~~[4][2] SEEING~~ that Petitioner sent the Debtor a notice pursuant to and the terms of Article 244 of the BIA Affidavit;

~~[5] SEEING~~ that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;

~~[3] WHEREFORE~~ Considering the absence of contestation by Bankrupt, Trustee and the other secured creditors namely, 4379225 Canada Inc., RoyNat Capital Inc. and Investissement Québec;

~~[4]~~ Considering the representations of counsel;

FOR THESE REASONS, THE COURT RENDERS JUDGMENT AS FOLLOWS:

~~[6] GRANTS~~ the Motion;

~~[5] GRANT~~ this Petition;

SERVICE

~~[7][6] ORDERSORDER~~ that any prior delay for the presentation of this MotionPetition is hereby abridged and validated so that this MotionPetition is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

~~[8][7] APPOINTS •, APPOINT~~ Richter Advisory Group Inc. (Gilles Robillard and Andrew Adessky), trustee, to act as receiver (the "Receiver") to the Property of • (the "DebtorEffigi Inc. ("Bankrupt")) until one of the following events comes to pass:

- (a) (a) the sale of all the Property; or
- (b) (b) the issuance of any order by the Court terminating the mandate of the Receiver;

~~[9]~~^[8] ~~DECLARES~~DECLARE that the order (the "Order") and its effects shall survive the filing by the Debtor~~Bankrupt~~ of a proposal, or of a notice of intention to make a proposal ~~or of a proposal~~, pursuant to the terms of the Bankruptcy and Insolvency Act (the "BIA,"), or the issuance of an initial order ~~in regard of the DebtorBankrupt~~ pursuant to the terms of the Companies Creditors Arrangements Act (the "CCAA" ~~or the bankruptcy of the Debtor,~~), unless the Court orders otherwise;

RECEIVER'S POWERS

~~[10]~~ ~~AUTHORIZES~~ the Receiver to exercise the following powers: ~~[NOTE: It is important to properly identify the powers sought. It is desirable to provide specific evidence to convince the Tribunal of the necessity of the powers sought].~~

40.1 POWERS RELATED TO THE POSSESSION OF THE PROPERTY

~~[9]~~ ~~AUTHORIZES~~ the ~~AUTHORIZE~~ Receiver to take possession of the Debtor's Property ~~described herein~~universality of Bankrupt's property, subject to the security in favour of Wells Fargo Capital Finance Corporation Canada, without any exception whatsoever, including all accounting and sale records, (the "Property") and to exercise the following powers listed hereinafter in the place and stead of the Debtor~~Bankrupt~~ in respect of the Property:

(a) ~~[NOTE: Identify the affected Property of the Debtor for example]:~~

~~— All the property of the Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in; or~~

~~— All the inventory, accounts receivable and claims of the Debtor, wherever situated, and regardless of whose possession they may be in; or~~

~~— [NOTE: Other categories of affected assets]~~

40.2 POWERS RELATED TO THE PRESERVATION OF THE PROPERTY

(b) (a) all the powers necessary for the preservation and for the protection of the Property;

- (e) (b) all the powers necessary to control the Property, the place of business and the premises occupied by the ~~Debtor~~Bankrupt;
- (d) (c) all the powers necessary to grant the ~~Receiver~~ access, at all times, to the place of business and to the premises of the ~~Debtor~~Bankrupt, to the Property, and to change the locks granting access to such premises and placesplace of business and premises of the DebtorBankrupt;
- (e) (d) all the powers necessary to grant the ~~Receiver~~ access to all the accounting records of the ~~Debtor~~Bankrupt, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the ~~"Records"~~), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (f) (e) all the powers necessary to undertake an analysis of the Debtor's Records;

10.3 POWERS RELATED TO THE ~~DEBTOR'S~~BANKRUPT'S OPERATIONS

- (g) (f) carry on, all or any part of the ~~Debtor's~~Bankrupt's operations;
- (h) (g) all the powers necessary to control the ~~Debtor's~~Bankrupt's receipts and disbursements;
- (i) (h) all the powers necessary to collect all the accounts receivable and all the other claims of the ~~Debtor~~Bankrupt and to transact in respect of same, as well as to sign any document for this purpose;
- (j) (i) all the powers necessary to open any required bank account, pursuant to the terms and conditions the ~~Receiver~~ may determine, with any chartered Canadian bank, or ~~any~~ other financial institution, the whole, in order to cash any item payable to the ~~Debtor~~Bankrupt and to issue any payment which, in the opinion of the ~~Receiver~~, is necessary or useful to the ~~Debtor's~~Bankrupt's operations;

10.4 POWERS RELATED TO THE DISPOSITION OR SALE OF THE PROPERTY

- (k) (j) all the powers necessary to carry out the sale or the disposition of the Property in ~~the~~ ordinary course of business of the ~~Debtor~~Bankrupt, to transact in that regard, and to sign any document or any contract

required or useful for these purposes or meant to give effect to any such sale or disposition; and

- (†) (k) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;

~~[11]~~[10] ~~ORDERS the~~ORDER Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser or purchasers and pursuant to conditions it deems reasonable in the circumstances;

~~[12]~~[11] ~~GRANTS the~~GRANT Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;

~~[13]~~[12] ~~AUTHORIZES the~~AUTHORIZE Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;

~~[14]~~[13] ~~DECLARES~~DECLARE that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by ~~this~~the Court.

DEBTOR'S TRUSTEE'S AND BANKRUPT'S DUTIES

~~[15]~~[14] ~~ORDERS the Debtor,~~ORDER Trustee, Bankrupt and its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor~~Bankrupt~~, as well as to the Records;

~~[16]~~[15] ~~ORDERS the Debtor,~~ORDER Trustee, Bankrupt and its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;

~~[17]~~[16] ~~ORDERS the Debtor~~ORDER Trustee and Bankrupt not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the

authorization of the Receiver; ~~[NOTE: The Receiver must determine whether it shall carry out the operations of the Debtor or whether it shall allow the Debtor to operate and if so, under what conditions]~~Receiver;

~~NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY~~

~~[18] ORDERS~~ that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property; ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~

~~[19] ORDERS~~ that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court; ~~[NOTE: Specific evidence is desirable in order to convince the Tribunal of the necessity of this clause];~~

CONTINUATION OF SERVICES

~~[20]~~^[17] ORDER that any person having an oral or written agreement with the ~~Debtor~~Bankrupt, as well as any supplier of goods or services to the ~~Debtor~~Bankrupt, is hereby restrained, until further order of ~~this~~the 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 authorized to continue use of the ~~Debtor's~~Bankrupt's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of ~~this~~the Order are paid by the Receiver, in accordance with the normal payment practices of the ~~Debtor~~Bankrupt 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~~the Court;

EMPLOYEES

~~[24]~~^[18] AUTHORIZES the AUTHORIZE Receiver to continue to engage the services of the ~~Debtor's~~Bankrupt's employees until the Receiver, acting for and on behalf of the ~~Debtor~~Bankrupt, terminates 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 ~~sections~~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) and 81.6(3) of the BIA or under the *Wage-Earner Protection Program Act*;

PROTECTION OF PERSONAL INFORMATION

~~[22]~~[19] DECLARES/DECLARE that pursuant to clause ~~7~~(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, ~~the~~ Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver. ~~[NOTE: this paragraph should be included in a clause of the Confidentiality Agreement.];~~ Receiver;

LIMITATION OF LIABILITY

~~[23]~~[20] DECLARES/DECLARE that subject to the powers granted to the Receiver pursuant to the terms of paragraph ~~10~~[9] of the Order, nothing herein contained shall require ~~the~~ Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of ~~this~~the Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the ~~BIA~~;

~~[24]~~[21] DECLARES/DECLARE that the powers of ~~the~~ Receiver shall be exercised pursuant to its sole discretion and judgment;

~~[25]~~[22] DECLARES/DECLARE that section 215 of the BIA applies *mutatis mutandis*, and hence that no action lies against ~~the~~ Receiver by reason of its appointment or the execution of the powers ~~granted~~ by the Court, except by leave of the Court. ~~The~~ entities related to ~~the~~ Receiver or belonging to the same group as ~~the~~ Receiver shall benefit from the protection arising under the present paragraph;

FEES

~~[26]~~ DECLARES that ~~as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$ • (the "Administration Charge");~~

- ~~[27]~~ **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- ~~[28]~~ **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtor's Property present and future;
- ~~[29]~~ **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;
- ~~[30]~~ **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

GENERAL

- ~~[34]~~^[23] **DECLARES/DECLARE** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the ~~Debtor~~Bankrupt under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- ~~[32]~~^[24] **DECLARES/DECLARE** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;

[33][25] DECLARES/DECLARE that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that ~~the Receiver~~ shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[34][26] DECLARES/DECLARE that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to ~~the Debtor's Bankrupt's~~ and the Receiver's counsel and to any other party who may request such delivery;

[35][27] DECLARES/DECLARE that, unless otherwise provided herein, ordered by ~~this~~the Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for ~~the Debtor Bankrupt~~ and the Receiver and has filed such notice with the Court;

[36][28] DECLARES/DECLARE that any interested Person may apply to ~~this~~the Court to vary or rescind the Order or seek other relief upon five (5)-days notice to ~~the Receiver, the~~ Petitioner and any other party likely to be affected by the order sought or upon such other notice, if ~~any~~, as ~~this~~ the Court may order;

[37][29] DECLARES/DECLARE that the ~~present~~ Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

[38][30] DECLARES/DECLARE that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of ~~this~~the Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which ~~the Receiver~~ shall be the foreign representative of ~~the Debtor Bankrupt~~. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to ~~the Receiver~~ as may be deemed necessary or appropriate for that purpose;

[39][31] REQUESTS/REQUEST the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere,

to act in aid of and to be complementary to ~~this~~the Court in carrying out the terms of the Order;

[40][32] ~~ORDER~~ORDER the provisional execution of the present ~~Order~~, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

[33] _____ THE WHOLE without cost, save and except in the event of contestation.

THE HONOURABLE MARK SCHRAGER, J.S.C.