

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**AFI HYDRO INC.
(NOW 1817870 ONTARIO INC.)**

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O. 1990, c. C.43 AS AMENDED**

MOTION RECORD

Date: August 13, 2014

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**ONTARIO
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Court File No. CV-14-10456-00CL

**ONTARIO
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- and -

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NOTICE OF MOTION

Richter Advisory Group Inc., in its capacity as court appointed receiver and manager (the "**Receiver**") of AFI Hydro Inc. (now 1817870 Ontario Inc.) (the "**Company**") will make a motion before a Judge of the Commercial List at 10:00 am on August 20, 2014 or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an Order dispensing with service of this Motion, including the Second Report and the Third Report (each, as defined below);

2. an Order authorizing the Receiver to pay Canada Revenue Agency ("**CRA**") the amount of \$5,997.41 in full and final settlement of the deemed trust claim asserted by CRA;

3. authorizing the Receiver to pay to Bank of Montreal and BMO Capital Corporation (collectively, the "**Lenders**") (a) the amount of \$4.8 million on account of the Indebtedness (as defined below), and (b) any amount held or subsequently received by the Receiver after satisfying any Prior Ranking Claims (as defined below) up to the full amount of the Indebtedness (as defined below), without further approval of this Court;

4. authorizing the Receiver to pay Prior Ranking Claims (as defined below) up to the aggregate amount of \$0.9 million, without further approval of this Court, subject to certain exceptions;

5. an Order approving Second Report of the Receiver dated July 25, 2014 (the "**Second Report**") and the Third Report of the Receiver dated August 13, 2014 (the "**Third Report**") and the activities of the Receiver set out therein;

6. an Order that the fees and disbursements of the Receiver and the Receiver's legal counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**") up to and including June 30, 2014, as set out in the Third Report are approved; and

7. such further and other Orders as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

The Receivership

- (a) the Receiver was appointed pursuant to an Order (the "**Appointment Order**") of this Court made on February 24, 2014, on application by Bank of Montreal;
- (b) pursuant to an Order of this Court dated April 30, 2014, this Court approved an asset purchase agreement made April 25, 2014 between the Receiver and Andritz Hydro AFI Inc. (the "**Purchaser**") pursuant to which the Purchaser acquired (the "**Sale Transaction**") the assets of the Company, including its fixed assets, inventory, furniture and fixtures, leasehold improvements and certain other assets for gross proceeds of approximately \$5.9 million;
- (c) Effective May 15, 2014, the name of the Company was changed from AFI Hydro Inc. to 1817870 Ontario Inc.;
- (d) On July 30, 2014, this Court made an Order adjudging the Company bankrupt and appointing Richter Advisory Group Inc. as the bankruptcy trustee;

Creditors

The Lenders

- (e) as at July 7, 2014, the Company was indebted to the Lenders in the approximate amount of \$13.1 million, exclusive of costs, on a secured basis (the "**Indebtedness**");

- (f) Davies reviewed the security (the "**Security**") granted by the Company in favour of the Lenders in respect of the Indebtedness and opined that the Security is valid and has been properly perfected;

Priority Claims

- (g) CRA has a claim against the Company for unremitted source deductions, of which \$5,997.41 constitutes a priority claim;
- (h) the Receiver also believes there are potential statutory deemed trust claims in respect of outstanding wages and vacation pay in the approximate amount of \$184,274 and continues to work with Service Canada to resolve this matter;

Receipts and Disbursements

- (i) in the aggregate, the Receiver has total receipts of approximately \$7.3 million; \$5.9 million of which relate to proceeds received from the Sale Transaction and approximately \$1.4 million of which relates to, among other things, accounts receivable collections, tax refunds and other receipts;
- (j) following disbursements of approximately \$1.6 million since February 24, 2014, the Receiver currently holds receipts of approximately \$5.7 million;

Payment to Creditors

- (k) the Receiver is seeking authorization to:
 - (i) pay CRA the amount of \$5,997.41 in full and final settlement of their deemed trust claim;

- (ii) pay the Lenders the amount of \$4.8 million on account of the Indebtedness;
 - (iii) retain \$0.9 million to pay any amounts that rank in priority to the Indebtedness, including professional fees subject to the Receiver's Charge (as defined in the Appointment Order) (the "**Prior Ranking Claims**"), without the need for further Court approval, unless a creditor of the Company objects to any such payments;
- (l) the Receiver is also seeking authorization, after satisfying any Prior Ranking Claims, to pay to the Lenders any amounts held by the Receiver or received by the Receiver after the date of this Motion up to the full amount of the Indebtedness, without the need for further Court approval;

Fees of the Receiver and Davies

- (m) since the date of the Appointment Order up to and including June 30, 2014: (i) the Receiver has professional fees for services rendered in the amount \$531,574 plus disbursements in the amount of \$6,919 (each excluding HST), and (ii) Davies has professional fees for services rendered in the amount of \$188,710 plus disbursements in the amount of \$4,716.91 (each excluding HST);

Miscellaneous

- (n) Sections 183, 243, 247, 248 and 251 of the *Bankruptcy and Insolvency Act*;
- (o) Rules 3.02, 16.04 and 37 of the *Rules of Civil Procedure*; and

- (p) such further and other grounds as counsel may advise and this Court may permit.

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

- (i) the Second Report and appendices referred to therein;
- (ii) the Third Report and appendices referred to therein;
- (iii) the Affidavit of Pritesh Patel sworn August 12, 2014;
- (iv) the Affidavit of Natalie Renner sworn August 11, 2014; and
- (v) such further and other materials as counsel may advise and this Court may permit.

Date: August 13, 2014

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BANK OF MONTREAL – and – AFI HYDRO INC. (NOW 1817870 ONTARIO INC.)
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Court File No. CV-14-10456-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable August 20, 2014)**

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

THE HONOURABLE M.

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WEDNESDAY, THE 20th DAY

OF AUGUST, 2014

B E T W E E N :

BANK OF MONTREAL

Applicant

- and -

**AFI HYDRO INC.
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Respondent

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ORDER

THIS MOTION, made by Richter Advisory Group Inc., in its capacity as court appointed receiver and manager (the "**Receiver**") of AFI Hydro Inc. (now 1817870 Ontario Inc.) (the "**Company**"), for an order:

1. dispensing with further service of this motion;
2. authorizing the Receiver to pay \$5,887.41 to Canada Revenue Agency ("**CRA**") in full and final settlement of the deemed trust claim asserted by CRA;
3. authorizing the Receiver to pay to the Bank of Montreal ("**BMO**") and BMO Capital Corporation (together with BMO, the "**Lenders**") (a) the amount of \$4.8 million on account of the secured indebtedness (the "**Indebtedness**") owed by the Company to the Lenders which totals approximately \$13.1 million, exclusive of costs, and (b) after satisfying any Prior Ranking Claims (as defined below), any other amounts currently held or received by the Receiver after the date of this Order up to the full amount of the Indebtedness, without the need for further Court approval;
4. authorizing the Receiver to pay any and all amounts that rank in priority to the Indebtedness (the "**Prior Ranking Claims**") up to the aggregate amount of \$0.9 million, without the need for further Court approval;
5. approving the Second Report of the Receiver dated July 25, 2014 (the "**Second Report**") and the Third Report of the Receiver dated August 13, 2014 (the "**Third Report**" and together with the Second Report, the "**Reports**") and the activities of the Receiver set out therein; and
6. approving the fees and disbursements of the Receiver and its counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**") up to and including June 30, 2014, as set out in the Affidavit of Pritesh Patel sworn August 13, 2014 (the "**Patel Affidavit**") and the Affidavit of Natalie Renner sworn August 11, 2014 (the "**Renner Affidavit**"),

was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Appendices and the Third Report and the Appendices including the Patel Affidavit and the Renner Affidavit, and on hearing the submissions of counsel for the Receiver and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed.

SERVICE

1. **THIS COURT ORDERS** that service of the Motion Record, including the Reports is deemed adequate and hereby dispenses with further service thereof.

PAYMENTS TO CREDITORS

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay CRA the amount of \$5,997.41 in full and final settlement of the deemed trust claim asserted by CRA.

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay the Lenders (a) the amount of \$4.8 million on account of the Indebtedness, and (b) after satisfying any Prior Ranking Claims, any other amounts currently held or received by the Receiver after the date of this Order, without the need for further Court approval.

4. **THIS COURT ORDERS** that the Receiver is authorized to pay any Prior Ranking Claim from monies held or received to date up to the aggregate amount of \$0.9 million, including the further fees and disbursements of the Receiver and Davies,

without the need for further Court approval, unless the Receiver receives an objection from a creditor of the Company prior to paying any Prior Ranking Claim.

5. **THIS COURT ORDERS** that any payments made by the Receiver pursuant to the authorizations granted to the Receiver under this Order are not and shall not be deemed to be distributions that are subject to the provisions of any one of subsection 159(2) of the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supplement), as amended, subsection 23(5) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended, subsection 86(3) of the *Employment Insurance Act*, S.C. 1996, c. 23, as amended, subsections 81(1) and 270(3) of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, subsection 19(2) of the *Employer Health Tax Act*, R.S.O. 1990, c. E. 11, as amended, and subsection 107(2) of the *Corporations Tax Act*, R.S.O. 1990, c. C.40, as amended, and subsection 22(5) of the *Retail Sales Tax Act*, R.S.O, c. R.31, as amended, and the Receiver be and is hereby directed not to obtain any certificate pursuant to any such statutory provisions and the Receiver shall not be liable in any manner for failure to obtain any certificate pursuant to any such statutory provisions prior to making the payments pursuant to the authorizations granted to the Receiver under this Order.

APPROVAL OF THE SECOND REPORT AND THE THIRD REPORT

6. **THIS COURT ORDERS** that activities of the Receiver, as set out in the Second Report, and the Second Report, including the appendices, are hereby and approved.

7. **THIS COURT ORDERS** that activities of the Receiver, as set out in the Third Report, and the Third Report, including the appendices, are hereby and approved.

FEES AND DISBURSEMENTS OF THE RECEIVER AND DAVIES

8. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period of February 24, 2014 to June 30, 2014 as described in the Patel Affidavit are hereby approved.

9. **THIS COURT ORDERS** that the fees and disbursements of Davies for the period of February 24, 2014 to June 30, 2014 as described in the Renner Affidavit, are hereby approved.

**ONTARIO
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ORDER

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MOTION RECORD

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