



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

Justice Conway

)
)
)

FRIDAY, THE 27th DAY

OF FEBRUARY, 2015

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**1817870 ONTARIO INC.
(FORMERLY AFI HYDRO 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

ORDER

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

1. if necessary, validating and abridging the time of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion

and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

2. authorizing and directing the Receiver to make payments totalling \$176,761 in respect of priority claims (the "**81.4 Claims**") under section 81.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), \$174,470 of which shall be paid to Service Canada in respect of its subrogated claim under the *Wage Earner Protection Program Act* and \$2,291 of which shall be paid directly to affected former employees of AFI;

3. authorizing and directing the Receiver to distribute \$840,000 to the Bank of Montreal and BMO Capital Corporation (collectively, the "**Lender**") on account of the outstanding secured indebtedness (the "**Indebtedness**") owed to the Lender (the "**BMO Distribution**");

4. authorizing and directing the Receiver to retain approximately \$46,845 from the available cash on hand remaining following payment of the 81.4 Claims and the BMO Distribution, and to use such funds to pay the Outstanding Priority Claims and Remaining Fees and Disbursements (each as defined in the Fourth Report of the Receiver dated February 20, 2015 (the "**Fourth Report**")) (collectively, the "**Outstanding Disbursements**") without further approval of this Court;

5. confirming 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(2) 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 that the Receiver is not required to obtain any certificate pursuant to any such statutory provisions and that 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;

6. approving the Fourth Report and the activities of the Receiver set out therein;

7. approving the accounts of the Receiver and its counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**"), including the Remaining Fees and Disbursements;

8. discharging the Receiver upon completion of certain remaining matters described in the Fourth Report (the "**Remaining Matters**"), and authorizing the Receiver to distribute any residual amounts remaining in its possession to the Lender after the payment of the Outstanding Disbursements, subject to the Receiver filing a certificate evidencing the same with the Court; and

9. releasing Richter from any and all liability, as set out in paragraph 10 of this Order,

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

ON READING the Fourth Report and the Appendices thereto, including the Affidavit of Pritesh Patel sworn February 19, 2015 (the "**Patel Affidavit**") and the Affidavit of Robin B. Schwill sworn February 19, 2015 (the "**Schwill Affidavit**"), and on hearing the submissions of counsel to the Receiver, 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 the time for service of the Notice of Motion and the Motion Record, including the Fourth Report, is hereby validated and abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

PAYMENTS TO CREDITORS

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make payments totalling \$176,761 in respect of the 81.4 Claims, \$174,470 of which shall be paid to Service Canada in respect of its subrogated claim under the *Wage Earner Protection Program Act* and \$2,291 of which shall be paid directly to affected former employees of AFI;

3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to pay the amount of \$840,000 to the Lender on account of the Indebtedness.

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to retain approximately \$46,845 from the available cash on hand remaining following payment of the 81.4 Claims and the BMO Distribution, and to use such funds to pay the Outstanding Disbursements without further approval of this Court;

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(2) 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 that 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 THIRD REPORT AND ACTIVITIES OF THE RECEIVER

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

FEES AND DISBURSEMENTS OF THE RECEIVER AND DAVIES

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period of July 1, 2014 to January 31, 2015 as described in the Patel Affidavit be and are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of Davies for the period of July 1, 2014 to January 31, 2015 as described in the Schwill Affidavit, be and are hereby approved.

DISCHARGE OF RECEIVER

9. **THIS COURT ORDERS** that, upon the filing of a Receiver's certificate with this Court substantially in the form attached as Schedule "A" hereto, Richter is hereby discharged as Receiver of the undertaking, property and assets of AFI, provided however that notwithstanding its discharge herein (a) Richter shall remain Receiver for the performance of the Remaining Matters and such incidental duties as may be required to complete the administration of the receivership herein including making distributions of remaining proceeds to the Lender; and (b) Richter shall continue to have the benefit of the provisions of all Orders made in this proceeding including all approvals, protections and stays of proceedings in favour of Richter in its capacity as Receiver.

10. **THIS COURT ORDERS** that Richter is hereby released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as

Receiver, save and except for any gross negligence or wilful misconduct on the part of Richter. Without limiting the generality of the foregoing, Richter is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings by any party served with notice of this motion, including the distribution to the Lender hereby authorized, save and except for any gross negligence or wilful misconduct on the part of Richter.

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

FEB 27 2015



Schedule "A"

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

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SUPERIOR COURT OF JUSTICE
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BANK OF MONTREAL

Applicant

- and -

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

Respondent

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RECITALS

A. pursuant to the Order of the Court made on February 24, 2014 (the "**Receivership Order**"), RSM Richter Inc. was appointed as the receiver (the "**Receiver**") of 1817870 Ontario Inc. (formerly AFI Hydro Inc.);

C. pursuant to an Order of the Court made on February 27, 2015 (the "**Order**"), the Court authorized the Receiver to complete certain remaining matters described in the Fourth Report of the Receiver dated February 20, 2015 (the "**Remaining Matters**") and to distribute any residual amounts remaining in its possession to the Bank of

Montreal and BMO Capital Corporation after the payment of the Outstanding Disbursements (as defined in the Order);

THE RECEIVER HEREBY CERTIFIES that it has, in accordance with the Order, completed the Remaining Matters and paid the Outstanding Disbursements.

DATED at Toronto, Ontario this day of , 2015.

Richter Advisory Group Inc.
the Receiver of 1817870 Ontario Inc.
and not in its personal capacity

By: _____
Name:
Title:

BANK OF MONTREAL – and – 1817870 ONTARIO INC. (FORMERLY AFI HYDRO INC.)
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

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

Proceeding commenced at Toronto

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 WELLINGTON STREET WEST
TORONTO, ON M5V 3J7

Robin B. Schwill (LSUC #38452I)
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Lawyers for the Receiver

BANK OF MONTREAL – and – 1817870 ONTARIO INC. (FORMERLY AFI HYDRO INC.)
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

Feb 27/15 D. Milivojevic + R. Schwill,
for Receiver

DTG in form signed by me. I am
satisfied that the ^{payments} ~~payments~~ to be made
pursuant to the order are not
distributions requiring a clearance
certificate pursuant to the tax
statutes referred to in para 5 of the
order.

Conway J

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

MOTION RECORD
(Returnable February 27, 2015)

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Robin B. Schwill (LSUC #38452I)
Dina Milivojevic (LSUC #64521U)

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