

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Mr.)

MONDAY, THE 12TH

JUSTICE Pattillo)

DAY OF JANUARY, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.




APPROVAL AND VESTING
ORDER

THIS MOTION, made by **RICHTER ADVISORY SERVICES INC.** in its capacity as court-appointed monitor ("**Monitor**") of the property and assets of Bombay & Co. Inc. ("**Bombay**"), Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc. ("**Benix**") (Bombay together with Bowring and Benix, the "**B&C Entities**"), for an order *inter alia*: (i) declaring that the timing and method of service and filing of the Notice of Motion and the Monitor's motion record is abridged and validated such that the motion is properly returnable today; (ii) approving the third report to the Court of the Monitor dated January 5, 2015 (the "**Third Report**") of the Monitor, and the activities of the Monitor as set out therein, (iii) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale among B&C Entities, as vendors, (the "**Debtors**"), and 2383029 Ontario Inc. (the "**Bombay Purchaser**") and 2437533 Ontario Inc. (the

“Bowring Purchaser”) (collectively, the “Purchasers”) and Fluid Brands Inc. (“Fluid”) as sole shareholder of the Purchasers dated December 31, 2014 (the “Sale Agreement”), and appended to the Third Report, and vesting all of Bombay’s right, title and interest in and to assets described in the Sale Agreement (the “Sale Assets”) in the Bombay Purchaser free and clear of all claims and encumbrances other than Permitted Encumbrances as defined in and set out in the Sale Agreement and vesting all of Benix and Bowring’s right, title and interest in and to the Sale Assets in the Bowring Purchaser free and clear of all claims and encumbrances other than Permitted Encumbrances as defined in and set out in the Sale Agreement; (iv) authorizing and directing Bombay to file articles of reorganization pursuant to s.186 of the *Business Corporations Act* (Ontario) (“OBCA”) to change the name of Bombay & Co. Inc. to 2151456 Ontario Inc., (v) authorizing and directing Bowring to file articles of reorganization pursuant to s.186 of the OBCA to change the name of Bowring and Co. Inc. to 1677711 Ontario Inc. (vi) authorizing and directing Benix to file articles of reorganization pursuant to s.186 of the OBCA to change the name of Benix & Co. Inc. to 1115926 Ontario Inc.; (vii) sealing Confidential Appendices “1” and “2” to the Third Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated January 5, 2015, the Third Report, and upon hearing the submissions of the counsel for the Monitor, Canadian Imperial Bank of Commerce (“CIBC”), the Purchasers, Fluid, Isaac Bennet Sales Agencies, Inc. (“IBSA”), and F.B.I. Inc. (“FBI”), no other party attending, although duly served, as appears from the Affidavits of Service of Stephanie Waugh and Mary Carreiro sworn January 6, 2015, and filed.

sunLife
Assurance
Company
of
Canada,
Calloway,
RIET
etal



1. THIS COURT ORDERS AND DECLARES that the timing and method of service and filing of the Notice of Motion and the Monitor's motion record, are hereby abridged and validated such that this motion is properly returnable today.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtors is hereby authorized and approved *nunc pro tunc*, and the Debtors are hereby authorized to make such minor amendments as the Monitor may deem necessary with the consent of CIBC, IBSA and FBI. The Monitor and the Debtors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Sale Assets to the Bombay Purchaser and the Bowring Purchaser, in each case notwithstanding any requirement for shareholder approval.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchasers and Fluid substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), which Monitor's Certificate shall not be delivered unless and until each of CIBC, IBSA and FBI have confirmed to the Monitor in writing that all conditions required to be satisfied by the relevant operative documents between it and any of the Bombay Purchaser, the Bowring Purchaser and Fluid have been satisfied in an acceptable manner, all of Bombay's right, title and interest in and to the Sale Assets described in the Sale Agreement, shall vest absolutely in the Bombay Purchaser and all of Benix and Bowring's right, title and interest in and to the Sale Assets described in the Sale Agreement, shall vest absolutely in the Bowring Purchaser, all free and clear of and from any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise other than those set out in Schedule B hereto (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order granted by the Honourable Justice Penny on August 6, 2014; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, all of which are collectively referred to as the "Encumbrances", which term shall not include the Permitted Encumbrances listed on Schedule B. For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Sale Assets are hereby expunged and discharged as against the Sale Assets provided however that nothing herein shall affect the rights and remedies of the applicable landlord against the Purchasers that may exist or arise under or in respect of any real property lease that is assigned to the Purchasers in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchasers or further order of the Court.

4. THIS COURT ORDERS that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; (b) where any real property leases are not, in accordance with their terms, transferrable or assignable to the Purchasers without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred conveyed, assigned or vested in the Purchasers by operation of this Order save and except to the extent that the respective

consents have been, or are in the future, obtained from the respective landlords or further order of the Court.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net cash proceeds from the sale of the Sale Assets shall stand in the place and stead of the Sale Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net cash proceeds from the sale of the Sale Assets with the same priority as they had with respect to the Sale Assets immediately prior to the sale, as if the Sale Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor and the Debtors are authorized and permitted to disclose and transfer to the Bombay Purchaser and Bowring Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Sale Assets in the Bombay Purchaser and the Bowring Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to

the Monitor, as may be necessary or desirable to give effect to this Order or to assist the Monitor and their agents in carrying out the terms of this Order.

11. THIS COURT ORDERS that in accordance with the terms of the Sale Agreement, Bombay is hereby authorized and directed upon filing the Monitor's Certificate to file articles of reorganization substantially in the form attached hereto as Schedule C with the director appointed under the *Business Corporations Act* (Ontario) and pursuant to section 186 changing its name from Bombay & Co. Inc. to 2151456 Ontario Inc.

12. THE COURT ORDERS the Monitor to a send a copy of this Order together with a copy of the articles of reorganization of Bombay when filed to all parties have filed as secured parties under the *Personal Property Security Act* (Ontario) or similar provincial legislation against Bombay & Co. Inc.

13. THIS COURT ORDERS that in accordance with the terms of the Sale Agreement, Bowring is hereby authorized and directed upon filing the Monitor's Certificate to file articles of reorganization substantially in the form attached hereto as Schedule D with the director appointed under the *Business Corporations Act* (Ontario) and pursuant to section 186 changing its name from Bowring & Co. Inc. to 1677711 Ontario Inc.

14. THE COURT ORDERS the Monitor to a send a copy of this Order together with a copy of the articles of reorganization of Bowring when filed to all parties have filed as secured parties under the *Personal Property Security Act* (Ontario) or similar provincial legislation against Bowring & Co. Inc.

15. THIS COURT ORDERS that in accordance with the terms of the Sale Agreement, Benix is hereby authorized and directed upon filing the Monitor's Certificate to file articles of reorganization substantially in the form attached hereto as Schedule E with the director appointed under the *Business Corporations Act* (Ontario) and pursuant to section 186 changing its name from Benix & Co. Inc to 1115926 Ontario Inc.

16. THE COURT ORDERS the Monitor to send a copy of this Order together with a copy of the articles of reorganization of Benix when filed to all parties have filed as secured parties under the *Personal Property Security Act* (Ontario) or similar provincial legislation against Benix & Co. Inc.

17. THIS COURT ORDERS AND DECLARES that the Third Report and the activities of the Monitor as set out therein, be and hereby are approved.

18. THIS COURT ORDERS AND DECLARES that Confidential Appendices "1" and "2" to the Third Report be sealed until filing of the Monitor's Certificate with the Court, or further order of this Court.

 JAN 12 2015



Schedule A – Form of Monitor’s Certificate

Court File No. CV-14-10659-00CL

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

**IN THE MATTER OF THE *COMPANIES’ CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.**

Monitor’s Certificate

RECITALS

A Pursuant to an Order of the Honourable Justice ● of the Ontario Superior Court of Justice (the “**Court**”) dated January 12, 2015, the Court approved the agreement of purchase and sale among Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc. (collectively, as vendors, the “**Debtors**”), and 2383029 Ontario Inc. (the “**Bombay Purchaser**”) and 2437533 Ontario Inc. (the “**Bowring Purchaser**”) (collectively, the “**Purchasers**”) and Fluid Brands Inc. (“**Fluid**”) as sole shareholder of the Purchasers dated December 31, 2014 (the “**Sale Agreement**”) and the transaction contemplated by the Sale Agreement and provided for the vesting of Bombay’s right, title and interest in and to the Sale Assets (as defined in the Sale Agreement) in the Bombay Purchaser free and clear of all claims and encumbrances other than Permitted Encumbrances as

defined in and set out in the Sale Agreement and vesting all of Benix and Bowring's right, title and interest in and to the Sale Assets in the Bowring Purchaser free and clear of all claims and encumbrances other than Permitted Encumbrances as defined in and set out in the Sale Agreement which vesting is to be effective with respect to the Sale Assets upon the delivery by the Monitor to the Purchasers and Fluid of a certificate confirming (i) the payment by the Purchasers and Fluid of the Total Consideration for the Sale Assets; (ii) that each of CIBC, IBSA and FBI have confirmed to the Monitor in writing that all conditions required to be satisfied by the relevant operative documents between it and any of the Bombay Purchaser, the Bowring Purchaser and Fluid have been satisfied in an acceptable manner; (iii) that the conditions to Closing of the Sale Agreement have been satisfied or waived by the Debtors and the Purchasers and Fluid in accordance with the Sale Agreement; and (iv) the Transaction has been completed to the satisfaction of the Monitor.

B Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchasers and Fluid have paid and the Sellers and the Monitor have received the Total Consideration for the Sale Assets payable on the date of Closing pursuant to the Sale Agreement;
2. Each of CIBC, IBSA and FBI have confirmed to the Monitor in writing that all conditions required to be satisfied by the relevant operative documents between it and

any of the Bombay Purchaser, the Bowring Purchaser and Fluid have been satisfied in an acceptable manner;

3. The conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Sellers and the Purchasers and Fluid in accordance with the Sale Agreement; and

4. The Transaction has been completed to the satisfaction of the Monitor.

5. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**RICHTER ADVISORY GROUP INC IN ITS
CAPACITY AS COURT APPOINTED
MONITOR OF BOMBAY & CO. INC.,
BOWRING & CO. INC. AND BENIX & CO.
INC.**

Per: _____

Name:

Title:

Schedule B

Permitted Encumbrances

- a) all liens or encumbrances with respect to Bombay, Bowring or Benix in favour of Canadian Imperial Bank of Commerce;
- b) all liens or encumbrances with respect to Bowring or Bombay in favour of Isaac Bennet Sales Agencies, Inc.; and
- c) all liens or encumbrances with respect to Bowring or Bombay in favour of F.B.I. Inc.

Schedule C

Form 9
Business
Corporations
Act

Formule 9
Loi sur les
sociétés par
actions

ARTICLES OF REORGANIZATION
STATUTS DE RÉORGANISATION

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

B	O	M	B	A	Y		&		C	O	.		I	N	C	.																																	

2. The new name of the corporation if changed by the reorganization: (Set out in BLOCK CAPITAL LETTERS)
Nouvelle dénomination sociale de la société si elle est modifiée par suite de la réorganisation : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

2	1	5	1	4	5	6		O	N	T	A	R	I	O		I	N	C	.																																									

3. Date of incorporation/amalgamation: / *Date de la constitution ou de la fusion :*

_____ 2007/10/17 _____
Year, Month, Day / *année, mois, jour*

4. The reorganization was ordered by the court on / *La cour a ordonné la réorganisation le*

_____ 2015/01/12 _____
Year, Month, Day / *année, mois, jour*

and a certified copy of the Order of the court is attached to these articles as Exhibit "A". / *une copie certifiée conforme de l'ordonnance de la cour constitue l'annexe «A».*

5. In accordance with the Order for reorganization the articles of the corporation are amended as follows:
Conformément à l'ordonnance de réorganisation, les statuts de la société sont modifiés de la façon suivante :

The articles of the Corporation are hereby amended to change the name of the Corporation from Bombay & Co. Inc. to 2151456 Ontario Inc.

6. The terms and conditions to which the reorganization is made subject by the Order have been complied with.
Les conditions que l'ordonnance impose à la réorganisation ont été respectées.

These articles are submitted under section 186 of the *Business Corporations Act* and are signed in duplicate.
Les présents statuts sont déposés en vertu de l'article 186 de la Loi sur les sociétés par actions. Ils sont signés en double exemplaire.

Bombay & Co. Inc.

Name of Corporation / *Dénomination sociale de la société*

By/
Par :

Signature / *Signature*

Freddy Benitah

Director

Description of Office / *Fonction*

Schedule D

1677711

**ARTICLES OF REORGANIZATION
STATUTS DE RÉORGANISATION**

Form 9
Business
Corporations
Act

Formule 9
Loi sur les
sociétés par
actions

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

B	O	W	R	I	N	G		&		C	O	.		I	N	C	.																

2. The new name of the corporation if changed by the reorganization: (Set out in BLOCK CAPITAL LETTERS)
Nouvelle dénomination sociale de la société si elle est modifiée par suite de la réorganisation : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

1	6	7	7	7	1	1			O	N	T	A	R	I	O		I	N	C	.												

3. Date of incorporation/amalgamation: / *Date de la constitution ou de la fusion :*

2005/10/28

Year, Month, Day / année, mois, jour

4. The reorganization was ordered by the court on / *La cour a ordonné la réorganisation le*

2015/01/12

Year, Month, Day / année, mois, jour

and a certified copy of the Order of the court is attached to these articles as Exhibit "A". / *une copie certifiée conforme de l'ordonnance de la cour constitue l'annexe «A».*

5. In accordance with the Order for reorganization the articles of the corporation are amended as follows:
Conformément à l'ordonnance de réorganisation, les statuts de la société sont modifiés de la façon suivante :

The articles of the Corporation are hereby amended to change the name of the Corporation from Bowring & Co. Inc. to 1677711 Ontario Inc.

6. The terms and conditions to which the reorganization is made subject by the Order have been complied with.
Les conditions que l'ordonnance impose à la réorganisation ont été respectées.

These articles are submitted under section 186 of the *Business Corporations Act* and are signed in duplicate.
Les présents statuts sont déposés en vertu de l'article 186 de la Loi sur les sociétés par actions. Ils sont signés en double exemplaire.

Bowring & Co. Inc.

Name of Corporation / *Dénomination sociale de la société*

By/
Par :

Signature / *Signature*

Freddy Benitah

Director

Description of Office / *Fonction*

Schedule E

- 6. The terms and conditions to which the reorganization is made subject by the Order have been complied with.
Les conditions que l'ordonnance impose à la réorganisation ont été respectées.

These articles are submitted under section 186 of the *Business Corporations Act* and are signed in duplicate.
Les présents statuts sont déposés en vertu de l'article 186 de la Loi sur les sociétés par actions. Ils sont signés en double exemplaire.

Benix & Co. Inc.

Name of Corporation / *Dénomination sociale de la société*

By/
Par :

Signature / *Signature*

Freddy Benitah

Director

Description of Office / *Fonction*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING BOMBAY & CO. INC., BOWRING & CO. INC.
AND BENIX & CO. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(January 12, 2015)**

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*Lawyers for Richter Advisory Group Inc., in its Capacity as
Monitor*

Jan 12/15

Court File No. CV-14-10659-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING BOMBAY & CO. INC., BOWRING & CO. INC.
AND BENIX & CO. INC.

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(RETURNABLE JANUARY 12, 2015)

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Lawyers for Richter Advisory Group Inc., in its Capacity as
Monitor

January 12, 2015

Having regard to the material filed
and submissions of counsel, I am
satisfied that the sale order requested
should issue. No one in opposition

Ms. Phillips on behalf of Sun Life
(Lansford) seeks an endorsement that the
order is without prejudice to its rights as
landlord. I am satisfied its ~~rights~~ such
an endorsement is not necessary because of
the ~~order~~ provisions that apply.
The sale documents shall be sealed
until completion of the sale in further order.

[Handwritten Signature]