

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-044334-130

DATE: March 21, 2013

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.S.C.

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

- [1] The Court 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 (the "Motion"), presented by Petitioner, Wells Fargo Finance Corporation Canada Inc. a secured creditor of Bankrupt, Effigi Inc.;
- [2] Seeing the allegations of Petitioner's Motion, the Exhibits in support thereof and the Affidavit;
- [3] Seeing the assignment in bankruptcy filed by the Bankrupt on March 20, 2013;
- [4] Considering the absence of contestation by Bankrupt, Trustee and the other secured creditors namely, 4379225 Canada Inc., RoyNat Capital Inc. and Investissement Québec;
- [5] Considering the representations of counsel;

FOR THESE REASONS, THE COURT RENDERS JUDGMENT AS FOLLOWS:

- [6] **GRANTS** the Motion;

SERVICE

- [7] **ORDERS** that any prior delay for the presentation of the Motion is hereby abridged and validated so that the Motion is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

- [8] **APPOINTS** Richter Advisory Group Inc. (Gilles Robillard and Andrew Adessky), trustee, to act as receiver ("**Receiver**") to the Property of Effigi Inc. ("**Bankrupt**") until the occurrence of one of the following events:
 - (a) the sale of all the Property; or
 - (b) the issuance of any order by the Court terminating the mandate of Receiver;
- [9] **DECLARES** that this order (the "**Order**") and its effects shall survive the filing by Bankrupt of a proposal, pursuant to the terms of the *Bankruptcy and Insolvency Act* (the "**BIA**") or the issuance of an initial order regarding the Bankrupt pursuant to the terms of the *Companies Creditors Arrangements Act* (the "**CCAA**"), unless the Court orders otherwise;

RECEIVER'S POWERS

POWERS RELATED TO THE POSSESSION OF THE PROPERTY

- [10] **AUTHORIZES** Receiver to take possession of the 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 Bankrupt in respect of the Property:

POWERS RELATED TO THE PRESERVATION OF THE PROPERTY

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the place of business and the premises occupied by Bankrupt;
- (c) all the powers necessary to grant Receiver access, at all times, to the place of business and to the premises of Bankrupt, to the Property, and to change the locks granting access to such place of business and premises of Bankrupt;
- (d) all the powers necessary to grant Receiver access to all the accounting records of 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 Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Records;

POWERS RELATED TO BANKRUPT'S OPERATIONS

- (f) all the powers necessary to carry on all or any part of Bankrupt's operations;
- (g) all the powers necessary to control Bankrupt's receipts and disbursements;
- (h) all the powers necessary to collect all the accounts receivable and all the other claims of Bankrupt and to transact in respect of same, as well as to sign any document for this purpose;

- (i) all the powers necessary to open any required bank account, pursuant to the terms and conditions Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole in order to cash any item payable to Bankrupt and to issue any payment which, in the opinion of Receiver, is necessary or useful to Bankrupt's operations;

POWERS RELATED TO THE DISPOSITION OR SALE OF THE PROPERTY

- (j) all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of 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] **ORDERS** Receiver to petition the Court for authorization to sell all or any part of the Property outside the ordinary course of business, upon finding a purchaser or purchasers and pursuant to conditions it deems reasonable in the circumstances;
- [12] **GRANTS** 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] **AUTHORIZES** Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
- [14] **DECLARES** that 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 Petitioner's attorney. Where Receiver has been advised by Petitioner that information is confidential, proprietary or competitive, Receiver shall not provide such information to any person without the consent of Petitioner unless otherwise directed by the Court.

TRUSTEE'S AND BANKRUPT'S DUTIES

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

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

CONTINUATION OF SERVICES

- [18] **ORDERS** that any person having an oral or written agreement with Bankrupt, as well as any supplier of goods or services to Bankrupt, is hereby restrained, until further order of the Court, from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by Receiver, and that Receiver shall be authorized to continue use of 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 the Order are paid by Receiver, in accordance with the normal payment practices of Bankrupt or such other practices as may be agreed upon by the supplier or service provider and Receiver, or as may be ordered by the Court;

EMPLOYEES

- [19] **AUTHORIZES** Receiver to continue to engage the services of Bankrupt's employees until Receiver, acting for and on behalf of Bankrupt, terminates the employment of such employees. Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as 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

- [20] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, 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 Receiver;

LIMITATION OF LIABILITY

- [21] **DECLARES** that subject to the powers granted to Receiver pursuant to the terms of paragraph [10] of the Order, nothing herein contained shall require Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. Receiver shall not, as a result of 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;
- [22] **DECLARES** that the powers of Receiver shall be exercised pursuant to its sole discretion and judgment;
- [23] **DECLARES** that section 215 of the BIA applies *mutatis mutandis* and hence that no action lies against 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 Receiver or belonging to the same group as Receiver shall benefit from the protection arising under the present paragraph;

GENERAL

- [24] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by Bankrupt under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [25] **DECLARES** that 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 business days after mailing if delivered by ordinary mail;
- [26] **DECLARES** that 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 Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

- [27] **DECLARES** 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 Bankrupt's and Receiver's counsel and to any other party who may request such delivery;
- [28] **DECLARES** that, unless otherwise provided herein, ordered by 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 Bankrupt and Receiver and has filed such notice with the Court;
- [29] **ORDERS** Receiver to make this Order, the Motion and exhibits, as well as all future proceedings and orders, publicly available on its website. Receiver shall also make available a version of this Order in compared version to the standard receivership order posted by the Bar of Montreal.
- [30] **DECLARES** that any interested Person may apply to the Court to vary or rescind the Order or seek other relief upon five days notice to Receiver, Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as the Court may order;
- [31] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [32] **DECLARES** that 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 the Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which Receiver shall be the foreign representative of Bankrupt. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to Receiver as may be deemed necessary or appropriate for that purpose;
- [33] **REQUESTS** 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 the Court in carrying out the terms of the Order;

- [34] **ORDERS** the provisional execution of the Order, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [35] **THE WHOLE** without costs, save and except in the event of contestation.

Mark Schragger

THE HONOURABLE MARK SCHRAGER, J.S.C.

COPIE CONFIRMÉ
Arthur Blanchett
Greffier adjoint