

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *Mr.*
JUSTICE *PENNY*

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)
)
WEDNESDAY, THE 2ND
DAY OF AUGUST, 2017



Estate/Court File No. 33-2276663

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FUEL INDUSTRIES INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Applicant

Estate/Court File No. 33-2276664

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FUEL TECHNOLOGIES INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by Fuel Industries Inc. and Fuel Technologies Inc. (the "**Fuel Companies**") for an Order:

- a. approving the sale transaction (the "**Sale Transaction**") contemplated by an asset purchase agreement (the "**Sale Agreement**") between the Fuel Companies and 2587485 Ontario Ltd. (the "**Purchaser**") dated July 28, 2017; and
- b. vesting in the Purchaser the right, title and interest in and to the assets of the Fuel Companies to be sold pursuant to and as described in the Sale Agreement (the "**Purchased Assets**")

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

ON READING the affidavit of Michel Burns sworn July 31, 2017 and the Exhibits thereto and the Report of Richter Advisory Group Inc. dated August 1, 2017 in its capacity as Proposal

Trustee of the Applicants (the "**First Report**") and on hearing the submissions of counsel for the Fuel Companies, counsel for the Proposal Trustee and counsel for the Purchaser, no one appearing for any other party although duly served as appears from the affidavits of service of Sara-Ann Van Allen, Amanda Campbell and Antoinette De Pinto, filed:

1. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Sale Agreement.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record herein and the First Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

APPROVAL

3. **THIS COURT ORDERS AND DECLARES** that the Sale Transaction is hereby approved, and the execution of the Sale Agreement by the Fuel Companies is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Fuel Companies and the Purchaser, with the approval of the Proposal Trustee, may deem necessary. The Fuel Companies and the Proposal Trustee 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 Sale Transaction and for the conveyance of the Purchased Assets to the Purchaser.

VESTING

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate by the Proposal Trustee to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Proposal Trustee's Certificate**"), all of the Fuel Companies' right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, 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 (collectively, the "Claims"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges that may be granted by this Court in these proceedings save and except the DIP Charge as defined in the August 2, 2017 order, and (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, easements and restrictive covenants listed on Schedule "B") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that any amounts the Fuel Companies may be entitled to receive for eligible Ontario labour, marketing and distribution expenditures relating to the development of interactive digital media products, including the Ontario Interactive Digital Media Tax Credit (the "OIDMTC") from and after the making of this Order shall be received or collected by the Fuel Companies, the Proposal Trustee or future trustee in bankruptcy on behalf of the Purchaser and shall be transferred to the Purchaser forthwith upon receipt.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the applicable Purchased Assets with the same priority as they had with respect to the applicable Purchased Assets immediately prior to the sale, as if the applicable Purchased 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.

7. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Fuel Companies and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Fuel Companies' records pertaining to the Fuel Companies' past and current employees, including personal information of those employees to be hired by the Purchaser pursuant to the Sale Agreement. The Purchaser 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 Fuel Companies.

9. **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 the Fuel Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of either of the Fuel Companies;

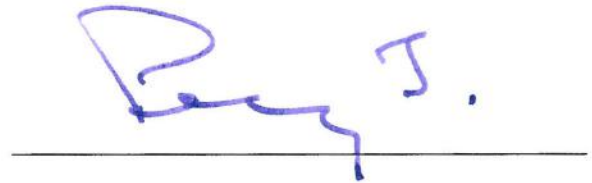
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Fuel Companies and shall not be void or voidable by creditors of the Fuel Companies, nor shall it constitute nor be deemed to be a fraudulent 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.

10. **THIS COURT ORDERS** that the Fuel Companies are authorized, following the completion of the Sale Transaction, to execute, deliver and file any document, including without limitation, any articles of amendment, required in order to effect a change of their corporate name, and this Court waives any third party requirement, required consent or solvency requirement pursuant to any Canadian federal or provincial legislation relating to same.

11. **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 Proposal Trustee 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

13. **THIS COURT ORDERS** that the Confidential Appendix "A" to the First Report be kept confidential and under seal until the earlier of: (i) Closing (as defined in the Sale Agreement); or (ii) further Order of this Honourable Court.



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

AUG 02 2017

PER / PAR:



Schedule A – Proposal Trustee’s Certificate

Estate/Court File No. 33-2276663

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FUEL INDUSTRIES INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Applicant

Estate/Court File No. 33-2276664

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FUEL TECHNOLOGIES INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

Applicant

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. On July 26, 2017 each of Fuel Industries Inc. and Fuel Technologies Inc. (together, the “**Fuel Companies**”) filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. Richter Advisory Group Inc. was appointed as the Fuel Companies’ proposal trustee (the “**Proposal Trustee**”).

B. Pursuant to an Order of the Court dated August ●, 2017 (the “**Approval and Vesting Order**”), the Court approved the agreement of purchase and sale made as of July 28 , 2017 (as may be amended, restated or modified from time to time, the “**Sale Agreement**”) between the Fuel Companies and 2587485 Ontario Ltd. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Fuel Companies’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Fuel Companies and the Purchaser (as applicable); and (ii) the Sale Transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Fuel Companies and/or the Purchaser, as applicable; and

3. The Sale Transaction has been completed to the satisfaction of the Proposal Trustee.

4. This Certificate was delivered by the Proposal Trustee at _____ on
_____.

**Richter Advisory Group Inc., in its capacity as
Proposal Trustee of Fuel Industries Inc. and Fuel
Technologies Inc., and not in its personal
capacity**

Per: _____
Name:
Title:

Schedule B- Permitted Encumbrances

1. Encumbrances in favour of Dell Financial Services Canada Limited in respect of computer equipment
2. Encumbrances granted pursuant to the Loan Documents relating to the Chou Loan Agreements

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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