

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No 500-11-040374-114

DATE: *April 14th 2011*

UNDER THE PRESIDENCY OF: ~~Me Pierre Pellerin, registraire~~ REGISTRAR

OMNIGLOBE NETWORKS INC.

-and-

OMNIGLOBE BROADBAND INC. / OMNIGLOBE HAUT DÉBIT INC.

-and-

R.-A. MISENER TELECOM CORP.

-and-

OMNIGLOBE SATELLITE INC.

-and-

OMNIGLOBE CELLULAIRE INC. / OMNIGLOBE CELLULAR INC.

Debtors

-and-

RSM RICHTER INC.

Trustee / Receiver

-and-

ALTERINVEST II FUND L.P. / FONDS ALTERINVEST II S.E.C.

Petitioner

-and-

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BUSINESS DEVELOPMENT BANK OF CANADA

-and-

L'OFFICIER DE LA PUBLICITÉ DES DROITS PERSONNELS ET RÉELS MOBILIERS

-and-

FIER CPVC MONTREAL L.P.

-and-

BANK OF MONTREAL

Mis-en-cause

JUDGMENT

- [1] The registrar is seized of a Motion seeking the appointment of a receiver and the authorization to sell property of the debtors;
- [2] **CONSIDERING** the motion that have been presented to the registrar;
- [3] **CONSIDERING** the exhibits filed in support of the Motion;
- [4] **CONSIDERING** the affidavit of Marie-Josée Cosma filed in support of the Motion;
- [5] **CONSIDERING** the representations made by the petitioner's attorneys;
- [6] **WHEREAS** the Motion is well founded in facts and in law.

FOR THESE REASONS, THE REGISTRAR:

GRANTS the present Motion.

ORDERS that the delays for service and production of the Motion be abridged so that this motion be properly presentable today and dispense with further service thereof.

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ORDERS the appointment of RSM Richter Inc. (“**RSM Richter**”) pursuant to section 243(1) of the BIA, as Receiver, without security, of all of the assets, undertakings and properties of the debtors Omniglobe Networks Inc., Omniglobe Broadband Inc., R.A. Misener Telecom Corporation, Omniglobe Satellite Inc. and Omniglobe Cellular Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the “**Property**”).

ORDERS that the Receiver be empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, that the Receiver be expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by the order to be rendered herein;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to any one of the Debtors and to exercise all remedies of either one of the Debtors in collecting such monies, including, without limitation, to enforce any security held by any one of the Debtors;
- (e) to settle, extend or compromise any indebtedness owing to the Debtors;

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- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any one of the Debtors, for any purpose pursuant to the order to be rendered herein;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any one of the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (h) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (i) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Debtors;
- (j) to assign the Debtors or any one of them into bankruptcy;
- (k) to exercise any shareholder, partnership, joint venture or other rights which the Debtors or any one of them may have; and
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Persons.

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ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of the order to be rendered herein (all the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors or any one of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of the order to be rendered herein shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in

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gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and provided the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

ORDERS that no proceeding or enforcement process in any court or tribunal or under common law (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further order of this Court.

ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors, without written consent of the Receiver or leave of this Court.

ORDERS that all funds, monies, cheques, instruments and other forms of payment received or collected by the Receiver from and after the making of the order to be rendered herein from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of the order to be rendered or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the law or any further order of this Court.

ORDERS that the 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, or as employer under the *Act representing Labour Standards*, other than such amounts as the

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Receiver may specifically agree in writing to pay, or in respect of its obligations under section 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

ORDERS AND DECLARES that the Transaction, Offers P-1 and Asset Purchase Agreement P-8 be approved and that the execution of the Offers P-1, Asset Purchase Agreement P-8 and the conclusion of the Transaction by the Receiver and the Purchaser be authorized and approved, and the Receiver and the Purchaser be authorized and directed to take such additional steps and execute such additional documents, including an asset purchase agreement (the “APA”) substantially in the form of the draft APA attached to this Motion as Exhibit P-8, as may be necessary or desirable, for the completion of the Transaction and for the transfer of the Purchased Assets.

ORDERS AND DECLARES that Purchaser shall acquire good and valid title to the Purchased Assets upon execution of the APA by the Receiver and the Purchaser;

ORDERS AND DECLARES that upon execution of the APA all of the Debtors’ right, title and interest in and to the Purchased Assets, described in the Offer, 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 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, charges or hypothecs created by any orders rendered with respect to the Debtors, including any initial orders, and any renewal thereof; (ii) all charges, security interests or Claims evidenced by registrations at the Register of Personal and Movable Real Rights (Québec) or any other personal property registry system, (iii) all charges or security interests created pursuant to Sections 81.3, 81.4, 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) (all of which are collectively referred to as the “Encumbrances”) and, for greater certainty, that this Court Order that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the

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Purchased Assets and that the Transaction contemplated herein be as if it were a sale taking place by judicial authority pursuant to the *Civil code of Québec*.

ORDERS AND DIRECTS that all registrations of all Encumbrances with respect to the Purchased Assets be stricken from any movable real right register system or any personal property security act register system of a province in Canada, including those in force in Quebec, Ontario, British Columbia, Alberta, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Saskatchewan, Newfoundland and Labrador, including without limitation, the following security interests:

- the hypothecs registered in Quebec with the Registry of Personal and Movable Real Rights with respect to (i) Omnicore Networks Inc. under the following numbers: 10-07712743-0001, 10-0664856-0001, 08-0200367-0003, 08-0200367-0001, 08-0156831-0002, 08-0156831-0001, 07-0349572-0004, 07-0349572-0002, 07-0346932-0001, 09-0407551-0001, 09-0329979-0001, 09-0276396-0001; (ii) Omnicore Cellular Inc. under the following numbers: 10-07741243-0002, 09-0321152-0001, 09-0276396-0002;
- the security interest registered in Ontario with the PPSA Registry System with respect to (i) Omnicore Broadband Inc. under number 20090513 1240 1862 6898; (ii) R.A. Minsener Telecom Corporation under number 20090528 1442 1862 7868; (iii) Omnicore Networks Inc. under numbers 20100928 0857 2964 0046, 20090513 1240 1862 6896, 20090507 1526 2964 0029;
- the security interest registered in Alberta with the PPSA Registry System with respect to R.A. Minsener Telecom Corporation under number 09052821792;
- the security interest registered in Nova Scotia with the PPSA Registry System with respect to Omnicore Networks Inc. under number 17198904;
- the security interest registered in British Columbia with the PPSA Registry System with respect to (i) Omnicore Networks Inc. under number 827606F; (ii) Omnicore Satellite Inc. under number 966531E.

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ORDERS that for the purpose of determining the nature and priority of any Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having the possession or control immediately prior to the sale.

ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Sellers; and
- (d) the provisions of any federal or provincial statutes;

the vesting of (i) the Purchased Assets in the Purchaser pursuant to the order to be rendered herein, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA 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.

ORDERS that the Receiver may from time to time apply this Court for advice and directions in the discharge of its powers and duties hereunder.

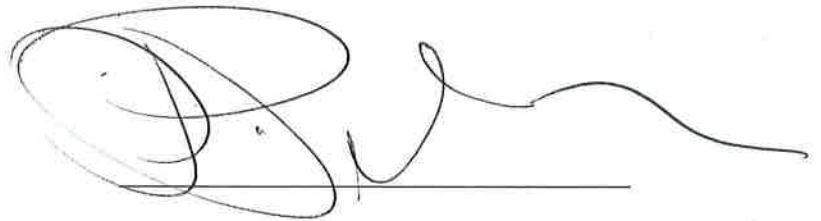
ORDERS that nothing in the order to be rendered herein shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to the order to be rendered herein and to assist the Receiver and its agents in carrying out the terms of the order to be rendered herein and that all courts, tribunals, regulatory and administrative bodies be respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect the order to be rendered or to assist the Receiver and its agents in carrying out the terms of the order to be rendered herein.

ORDERS that the Receiver be at liberty and be authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of the order to be rendered and for assistance in carrying out the terms of said order, and that the Receiver be 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.

THE WHOLE without costs.



REGISTAR

