

#7.

Court File Number: CV-14-10456-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Bank of Montreal

Plaintiff(s)

AND

AFI Hydro

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The First Report of the Receiver is approved.

Order to issue in the form signed by me this day.

April 30, 2014
Date

[Signature]
Judge's Signature

Additional Pages _____



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 30TH

JUSTICE PENNY

)

DAY OF APRIL, 2014

)

BANK OF MONTREAL

Applicant

- and -

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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of AFI Hydro Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Andritz Hydro AFI, Inc. (the "Purchaser") dated April 25, 2014 and appended to the Report of the Receiver dated April 25, 2014 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Bank of Montreal, and those other parties as appearing on the Counsel Slip, no one appearing

for any other person on the service list, although properly served as appears from the affidavit of Robin Schwill sworn April 28, 2014 filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby approved. The Receiver is 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 Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 created by the Order of the Honourable Mr. Justice Wilton-Siegel dated February 24, 2014; 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"), 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.

4. 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 Receiver's Certificate 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 that possession or control immediately prior to the sale.

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

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. 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 Debtor.

7. 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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 Debtor and shall not be void or voidable by creditors of the Debtor, 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.

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

9. THIS COURT ORDERS that, notwithstanding the provisions of Section 171(3) of the *Business Corporations Act* (Ontario) (the "OBCA"), the Receiver be and is hereby authorized and directed to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of AFI Hydro Inc. to a corporate name that does not include the words "AFI" or "Allied Fabricators" (and such amendment shall be deemed to have been duly authorized by Section 168 and 170 of the OBCA (as applicable) without any shareholder or director resolution approving such amendment being required) and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon being in receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby also authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of the Debtor if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

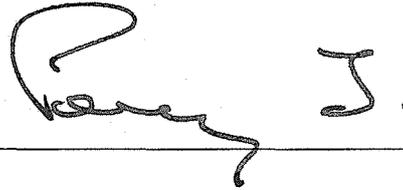
10. THIS COURT ORDERS that, pending closing of the Transaction, the Confidential Supplementary Report to the First Report of the Receiver dated April 25, 2014, be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

11. THIS COURT ORDERS that, as part of the closing of the Transaction, the Receiver be and is hereby authorized and directed to effect the termination, on behalf of the Debtor, of the Debtor's lease with Silverbridge Business Centre Limited for its facilities at 6 Adams Street, Paris, Ontario.

12. THIS COURT ORDERS that the Report and the activities of the Receiver to date as set out therein be and are hereby approved.

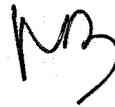
13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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

APR 30 2014



Schedule A – Form of Receiver’s Certificate

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

BANK OF MONTREAL

Applicant

- and -

AFI HYDRO INC.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "Court") dated February 24, 2014, Richter Advisory Group Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of AFI Hydro Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated April 30, 2014, the Court approved the agreement of purchase and sale made as of April 25, 2014 (the "Sale Agreement") between the Receiver and Andrtiz Hydro AFI, Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**RICHTER ADVISORY GROUP INC., in its
capacity as Receiver of the undertaking,
property and assets of AFI HYDRO INC.,
and not in its personal capacity**

Per: _____
Name:
Title:

BANK OF MONTREAL – and – 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(PROCEEDING COMMENCED AT TORONTO)**

APPROVAL AND VESTING ORDER

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

Robin B. Schwill
(LSUC #: 384521)

Telephone: 416.863.5502
Facsimile: 416.863.0871

Lawyers for the Receiver