

APPENDIX "II"

Court File No. CV-12-9861-00CL

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

BETWEEN:

CANADIAN SOLAR SOLUTIONS INC.

Applicant

and

RA SOLAR LEASING INC.

Respondent

**FIRST REPORT OF THE RECEIVER
BDO CANADA LIMITED**

JANUARY 9, 2013

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INTRODUCTION

1. On November 26, 2012, BDO Canada Limited was appointed as receiver and manager (“Receiver”) of all of the assets, rights, property, and undertaking of RA Solar Leasing Inc. (“RA Solar”) associated with, arising out of, or in any way or manner related to any and all of the projects funded in whole or in part by Canadian Solar Solutions Inc. (“CSSI”) pursuant to the Master Purchase Agreement dated November 10, 2011 (the “MPA”) between RA Solar, RA Solar Inc. and CSSI (the “Projects”) pursuant to the Order of the Honourable Justice Newbould (the “Receivership Order”). The Receivership Order is dated November 26, 2012 and was issued November 27, 2012 on the application of CSSI, a secured creditor. A copy of the Receivership Order and the related endorsement of the Honourable Justice Newbould are attached as Appendix “I”.
2. RA Solar was in the business of leasing rooftops from homeowners for the purpose of installing photovoltaic solar power generating facilities that comply with the requirements of the Ontario MicroFIT Program.

Purpose of this Report

3. The purpose of this report is to:
 - a) Inform this Court of the activities of the Receiver taken to date and request approval of such activities as set out herein;

- b) Obtain the Court's approval for the Receiver's acceptance of payment from Icarus Power Generation Inc. ("Icarus") with respect to 4 projects partially funded by CSSI, and confirmation that the Icarus Projects are not considered part of the remaining Projects being marketed and sold by the Receiver;
- c) Obtain an order compelling Mr. Steve Marshall to deliver to the Receiver all of RA Solar's property that is in his possession or control, including, without limitation, the Valuation Model (defined elsewhere), the Solstice Database (defined elsewhere), and any and all passwords required to fully access and utilize same;
- d) Obtain authorization for the Receiver to conduct a marketing and sale process for the Projects in accordance with the order being sought; and
- e) Obtain such further and other relief as counsel may advise and this Court may permit.

BACKGROUND

RA Solar and the Ontario MicroFIT Program

4. On or about September, 2009, the Government of Ontario launched Canada's first Feed-in Tariff Renewable Energy Program. A feed-in tariff (or "FIT") is a 20-year contracted rate paid for renewable energy produced by the generating facility, which is fed into the Ontario Power Grid. The MicroFIT Program is a "stream" or

component of the FIT Program, designed specifically to encourage the development of micro-scale renewable energy projects, such as residential solar photovoltaic installations.

5. The MicroFIT Program ("MicroFIT") is operated or governed through the Ontario Power Authority ("OPA"). The electricity generated by a MicroFIT system is fed into the local power grid. The OPA purchases that electricity at a fixed rate per watt of energy produced. The FIT payment relevant to MicroFIT contracts ("Generation Payments") is approximately 80.2 cents per watt for solar power systems that are 10kw in size or less.
6. Each rooftop that is leased from a homeowner by RA Solar is referred to as a project. A diagram demonstrating the components of a project is attached as Appendix "II".
7. Each project is supported by an installation and lease agreement (the "Lease") between RA Solar and the applicable homeowner to permit the installation of the solar system, and the MicroFIT contract between the OPA and the homeowner (the "Supplier") with respect to the particular rooftop facility (the "Facility"). Under a MicroFIT contract, the Supplier is to be paid by the OPA for the electricity generated into the local power grid by the Facility (the "Generation Payments"). These payments are assigned to RA Solar under the Lease. In addition, the Lease entitles the Supplier to an annual base rent payment (the "Base Rent") and a pre-determined portion of the Generation Payments. A sample copy of a Lease is

attached as Appendix "III", and a sample copy of a MicroFIT contract is attached as Appendix "IV".

RA Solar's Projects and operations

8. The MPA sets out the terms of the business relationship between CSSI and RA Solar. A copy of the MPA is attached as Appendix "V". CSSI and RA Solar were to operate together as intermediaries between eligible homeowners and the OPA under the MicroFIT program. Generally, RA Solar was to be responsible for project origination and management, and CSSI was to be responsible for the funding and constructing of the projects.
9. The Receivership Order applies to any and all of the projects funded in whole or in part by CSSI pursuant to the MPA (herein referred to as the "Projects"). To date, the Receiver has identified 148 projects as follows:
 - (a) 126 projects that were fully funded by CSSI as set out or listed in Appendix "VI";
 - (b) 18 projects that may have been funded by CSSI and/or another provider Heliene Inc. (the "Heliene Projects");
 - (c) 4 projects that were partially-funded by CSSI but installed by another provider, Icarus Power Generation Inc., and are discussed later in this report (the "Icarus Projects").

10. RA Solar operated from an office located at 390 Bay Street, Suite 1102, Toronto, Ontario (the "Premise"). The Premise is the office of Hybrid Partners Ltd. ("HPL"). The two directors of RA Solar, Mr. Steve Marshall ("Marshall") and Mr. G.F. Kym Anthony, are also the two sole directors of HPL.
11. RA Solar did not employ any employees. RA Solar utilized the services of three individuals provided through a management and administrative services agreement between RA Solar and HPL dated April 1, 2011.

RECEIVER'S ACTIVITIES TO DATE

12. The Receiver attended the Premise on November 27, 2012, the date in which the Receivership Order was issued, and took possession of the available contracts, agreements, and books and records. The Receiver is currently in the process of obtaining further contracts, agreements, and books and records, as discussed later in this report.
13. The Receiver also delivered a notification letter to Royal Bank of Canada ("RBC"), the sole financial institution at which RA Solar held its sole bank account. The notification letter instructed RBC to freeze all bank accounts held by RA Solar but to permit further deposits into the Bank Account and to remit bank balances directly to the Receiver.
14. RA Solar operated only one bank account. Therefore, deposits of Generation Payments into the bank account from local distribution companies relate to all of the

projects in RA Solar's portfolio. As such, the Receiver will have to review all deposits received, and determine whether the deposits relate to the Projects or to projects funded by other parties to which the Order does not apply.

15. To date, the Receiver has obtained \$31,810.59 from RBC representing the deposits made into the bank account since the receivership date.
16. The Receiver sought HPL's co-operation in continuing the operations of RA Solar on a limited basis. HPL submitted a non-negotiable proposal to the Receiver to continue to manage and oversee the day-to-day operations of the Projects for a period of two weeks at a rate of \$21,733.29. The Receiver did not accept the proposal as it was not considered to be cost-effective. The Receiver offered to retain Ms. Jeanette Forsythe, an employee of HPL who handled RA Solar's administrative and financial matters, at a rate of \$500 per day, but she declined the offer.
17. The Receiver is in the process of retaining a third party in the solar power industry to manage and oversee the day-to-day operations of the Projects. The Receiver has obtained proposals for management services from both Spark Solar Management Inc. and Icarus Power Generation Inc. ("Icarus") and is in the process of reviewing same.
18. The Receiver did not take possession of the Premise.
19. RA Solar's insurance policy with Royal Sun Alliance ("RSA") expired on December 8, 2012, and the Receiver obtained an extension of the policy until January 7, 2013. RSA required that the Receiver pay 50% of RA Solar's pre-receivership arrears of

\$10,584 in order to continue the policy after January 7, 2013. As a result, the Receiver obtained alternate insurance coverage for property and liability through Firstbrook, Cassie & Anderson Ltd.

20. Lastly, the Receiver notified the Office of the Superintendent of Bankruptcy and all known creditors of its appointment pursuant to section 243 of the *Bankruptcy and Insolvency Act*. The Receiver also served notice of the receivership to the homeowners of the Projects, as well as created a website (www.bdo.ca/rasolar) containing relevant receivership documents for the homeowners' reference. A copy of the standard letter or notice of the receivership to the said homeowners is attached hereto as Appendix "VII".

ISSUES

The Heliene Projects

21. The Receiver was contacted by Heliene Inc. ("Heliene"), a company which apparently also funded various projects of RA Solar. Heliene advised that it fully funded Heliene Projects and therefore takes the position that the Heliene Projects are not subject to the Receivership Order. The Heliene Projects are listed or identified in Appendix "VIII". Heliene also advised the Receiver that it intends to commence a sale process to dispose of its interest in the Heliene Projects. Also included in Appendix "VII" is a copy of the letter dated January 4, 2013 from the Receiver to Heliene regarding the Heliene Projects.

22. CSSI disputes Heliene's claim and has advised the Receiver that it partially funded and/or has security over the Heliene Projects and, accordingly, the Heliene Projects are subject to the Receivership Order. The Receiver has requested supporting documentation from CSSI and will investigate CSSI's claim.
23. In the event that the Receiver has an interest in the Heliene Projects, the Receiver has requested that Heliene provide details as to the proposed marketing and sale process for same. The Receiver has also requested that, in the event the Heliene Projects are sold by Heliene, the sale proceeds be held in trust with the Receiver's counsel pending the determination of whether the Heliene Projects are subject to the receivership order. Attached hereto as Appendix "IX" is a copy of the said letter dated January 9, 2013, from the Receiver to Heliene.

The Icarus Projects

24. CSSI identified 4 projects (the "Icarus Projects") which were funded by CSSI for the origination fees, but where the installation work was performed by Icarus. The Icarus Projects are listed or identified in Appendix "X".
25. Prior to the appointment of the Receiver, RA Solar, CSSI, and Icarus had reached (but not finalized) an agreement or understanding concerning the Icarus Projects. Under the agreement or understanding, Icarus was to pay \$27,792.35 to CSSI and \$5,975.28 to RA Solar in exchange for CSSI's release of all interests in the Icarus Projects. A copy of the agreement between Icarus and RA Solar, which was signed by Marshall on behalf of RA Solar, and is dated August 2, 2012, is attached as Appendix "XI".

26. During the receivership, the agreement was finalized and Icarus issued the respective payments to both CSSI and the Receiver. CSSI released its interest in the Icarus Projects.
27. The total amount paid by Icarus was based on a rate of \$1.00 per watt for each of the Icarus Projects. The portion paid to CSSI represents the funds originally advanced by CSSI for the origination fees. The rate of \$1.00 per watt is considered reasonable as CSSI generally advanced funds to RA Solar for origination fees for the Projects at a rate of \$1.10 per watt.
28. Icarus has requested, and the Receiver has agreed, to ensure that the order being sought in this Motion specifically states that the Icarus Projects are not part of the remaining Projects being marketed and sold by the Receiver. Accordingly, the Receiver hereby requests the Court's approval for the Receiver's acceptance of payment from Icarus Power Generation Inc. ("Icarus") with respect to 4 projects partially funded by CSSI, and confirmation that the Icarus Projects are not considered part of the remaining Projects being marketed and sold by the Receiver.

Books and Records

29. CSSI has advised the Receiver that RA Solar had previously developed a spreadsheet valuation model (the "Valuation Model") for due diligence purposes when RA Solar was attempting to sell its project portfolio prior to the receivership. CSSI believes the Valuation Model calculates the present dollar value of each project in the portfolio based on various factors. The Receiver believes that the Valuation Model

will be of significant importance to prospective purchasers of the Projects in the proposed marketing and sale process, as discussed later in this report.

30. In addition, CSSI also advised the Receiver that RA Solar had also developed an electronic database referred to as Solstice (the "Solstice Database") that contains electronic copies of agreements and documents relating to the Projects.
31. The Receiver submitted a request to Marshall to surrender a copy of the Valuation Model. Marshall advised that the Valuation Model was created using his own personal funds, and not considered property of RA Solar. Marshall advised that he would not provide the Receiver with the Valuation Model unless monetary consideration was provided.
32. The Receiver also submitted a request to Marshall to surrender the Solstice Database as well as any passwords required to access same. Marshall again advised that the Solstice Database was not considered property of RA Solar.
33. Copies of the Receiver's requests to Marshall and his subsequent response(s) are attached as Appendix "XII".
34. The Receiver is of the view that Marshall is required to surrender a copy of the Valuation Model and the Solstice Database, regardless of its ownership, pursuant to section 5 of the Receivership Order, which states 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 Debtor*, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information in that Person's possession or control, *and shall*

provide the Receiver or permit the Receiver to make, retain and take away copies thereof".

35. Given that Marshall has thus far refused to co-operate with the Receiver with respect to these requests, the Receiver hereby requests that the Court issue an order compelling him to deliver to the Receiver all of RA Solar's property that is in his possession or control, including, without limitation, the Valuation Model, the Solstice Database, and any and all passwords required to fully access and utilize same.

Reviewable Transactions

36. During the week preceding the issuance of the Receivership Order, RA Solar issued payments to Marshall and HPL totalling approximately \$44,000 and \$80,000 respectively. These payments caused RA Solar's bank account to go into an overdraft position of approximately \$115,000. RBC is currently pursuing the reversal of the transactions to eliminate the overdraft. The Receiver is reviewing or investigating these transactions.

PROPOSED SALE PROCESS

37. The Receiver has developed a proposed marketing and sale process for the Projects (the "Sale Process"). The Sale Process is designed to market RA Solar's right, title and interest in the Projects, and would include, subject to all necessary third party consents, an assignment of any contracts, leases, and agreements.

38. A detailed summary of the Sale Process is attached as Appendix "XIII". The proposed Sale Process includes the following key provisions:

- a) The Receiver will oversee and implement the Sale Process;
- b) The Receiver, with the assistance of CSSI, will prepare a list of the prospective and strategic purchasers who may be interested in purchasing the Projects;
- c) The Receiver, with the assistance of CSSI, will compile a comprehensive electronic data room (the "Data Room") that will include all relevant data that would be reasonably required by prospective purchasers in their due diligence process;
- d) The Receiver will prepare a form of confidentiality agreement (the "CA") which will be provided to prospective purchasers;
- e) The Receiver will prepare an information memorandum (the "IM") which will provide a concise summary of the Projects and various parcels, and which will allow potential purchasers to assess the value of the Projects. The IM will set out a timeline for the Sale Process, including the submission of formal offers, a proposed date for closing the sale transaction, and the information that will have to be included in an offer letter, including the purchase process, the Projects to be purchased, the form of consideration, the deposit and the financial capacity of the prospective purchaser to close the transaction contemplated in the offer letter;

- f) The Receiver will canvass interest amongst the parties on the list in the possible purchase of the Projects. In addition, the Receiver will publish advertisements in the national edition of The Globe and Mail to canvas further interested purchasers;
 - g) Prospective purchasers that sign a CA will be provided with the IM and access to the Data Room compiled and controlled by the Receiver. Prospective purchasers will have approximately four weeks to review the IM, the due diligence information, and to submit a formal, binding offer letter;
 - h) Upon expiry of the initial four week period, the Receiver will review all offers submitted and select the best offer;
 - i) After negotiation of an asset purchase agreement (the "APA") with the successful offeror, the Receiver will seek Court approval of the APA and, subject to approval being granted, will continue with closing the transaction contemplated by the APA.
39. The timeline for the Sale Process will be as follows:

March 1, 2013	Deadline for receipt of offers
March 15, 2013	Deadline for negotiations with an offeror and the completion of an APA
April 1, 2013	Deadline for obtaining Court approval of the APA

April 3, 2013 Closing of approved sale transaction

40. The closing of any sale of the Projects and other interests shall be conditional upon approval of this Court.
41. In addition, the Receiver intends to obtain some form of an independent indication of market value for the Projects.
42. Accordingly, the Receiver hereby requests that this Court issue an order authorizing the Receiver to proceed with the Sale Process.

All of which is respectfully submitted this 9th day of January, 2013.

BDO CANADA LIMITED
in its capacity as Receiver of
specific assets of RA Solar Leasing Inc.
and not in its personal capacity
Per:



Eugene P. Migus, CPA, CA•CIRP
Senior Vice-President