File No. CI 24-01-45056

THE KING'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED, AND SECTION 55 OF *THE COURT OF KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

-and-

GENESUS INC., CAN-AM GENETICS INC. and GENESUS GENETICS INC.,

Respondents.

BRIEF OF THE COURT-APPOINTED RECEIVER
HEARING DATE: OCTOBER 8, 2024 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE CHARTIER

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File No. 0128056.00004

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BRIEF OF THE RECEIVER

INDEX

PART I LIST OF DOCUMENTS AND AUTHORITIES RELIED UPON

Documents To Be Relied Upon:

1 Affidavit of Ed Barrington filed February 12, 2024 (the "**Barrington Affidavit**") (Court Registry Document Nos. 2 and 3);
2 Consent Receivership Order pronounced June 11, 2024 (Court Registry Document No. 15);
3 First Report of the Receiver dated July 2, 2024 (Court Registry Document No. 20);
4 Affidavit of Colby Ferbers sworn July 3, 2023 (the "**Ferbers Affidavit**") (Court Registry Document No. 26);
5 Second Report of the Receiver (the "**Second Report**") (Court Registry Document No. 29);
6 Order pronounced July 26, 2024 (Court Registry Document No. 32);
7 Notice of Motion dated October 2, 2024 (Court Registry Document No. 36);
8 Third Report of the Receiver dated October 2, 2024 (the "**Third Report**") (Court Registry Document No. 37);
9 Confidential Supplement to the Third Report dated October 2, 2024 (the "**Confidential Supplement**") (Court Registry Document No. 38); and
10 Affidavit of Service of Brittany Chapdelaine, to be filed (the "**Chapdelaine Affidavit**").

Authorities To Be Relied Upon:

TAB

1. *The Court of King's Bench Act,* C.C.S.M. c. c280, s. 55 (the "**KB Act**");
2. *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3 (the "**BIA**"), s. 243;
3. *The Corporations Act*, C.C.S.M. c. C225 (the "**Corporations Act**"), ss. 95(e), 167(1) and 185;
4. *Business Corporations Act*, RSA 2000, c. B-9 (the "**BCA**"), ss. 173, 192;
5. *Judicature Act,* R.S.A. 2000 c. J-2 (the "**Judicature Act**"), s. 13(2);
6. *Forage Subordinated Debt LP III v Enterra Feed Corporation et al.*, 2023 ABKB – Endorsement of the Honourable B.E. Romaine dated May 10, 2023 in File No. 2201 012953 (unreported); and
7. *Congress Financial Corporation (Canada) v American Sensors Electronics Inc.*, [1999] O.J. No. 382.
8. Draft Articles of Reorganization in respect of Genesus Inc.
9. Draft Articles of Reorganization in respect of Can-Am Genetics Inc.

PART II INTRODUCTION

1. By Consent Receivership Order (the "**Receivership Order**") pronounced by the Honourable Mr. Justice Chartier on June 11, 2024, BDO Canada Limited, was appointed receiver and manager (the **"Receiver"**) of all of the assets, undertakings and properties of Genesus Inc. ("**Genesus**"), Can-Am Genetics Inc. ("**Can-Am**") and Genesus Genetics Inc. ("**GGI**", and together with Genesus and Can-Am, the **"Debtors"**) relating to, acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof.

Receivership Order (Document No. 15)

2. By Order pronounced July 26, 2024, this Honourable Court approved, *inter alia*, a transaction pursuant to an asset purchase agreement between the Receiver and Genesus Genetic Technology Inc. ("**GGTI**") and the sale of specific assets of Genesus and Can-Am to GGTI (the "**GGTI Assets**") to GGTI (the **"Amended GGTI APA"**).

Order pronounced July 26, 2024 (Document No. 32)

3. The GGTI Assets included the names "Genesus" and "Can-Am". In order for GGTI to register and use the names "Genesus" and "Can-Am", Genesus and Can-Am must change their respective names through an amendment of their respective Articles of Incorporation.

Second Report, Exh. A (Document No. 29)
Third Report para 25

4. The Receiver requires additional powers in order to effect an amendment to Genesus' and Can-Am's respective Articles of Incorporation.

Third Report, para 25

5. Accordingly, the Receiver has brought the within motion seeking, *inter alia*, this Honourable Court's authorization and direction for the Receiver, Genesus and Can-Am to authorize, execute and deliver any documents necessary or desirable to effect the name changes of Genesus and Can-Am.

PART III POINT TO BE ARGUED

A. Should this Honourable Court authorize the Receiver, Genesus and Can-Am to execute and deliver the Amendment Documents (as hereinafter defined)?

PART IV FACTS

6. The Receiver was appointed pursuant to the Receivership Order on June 11, 2024. under section 243 of the BIA and section 55 of the KB Act.

Receivership Order (Document No. 15)

7. Genesus and Can-Am are corporations incorporated pursuant to the Laws of Manitoba. Genesus' business operations included the sale of swine genetics products and services, and Can-Am, *inter alia*, provided Genesus with swine for commercial production. Genesus and Can-Am have each ceased operations.

Barrington Affidavit, paras 2-3, Exhs. A-B (Document Nos. 2 and 3)

8. On July 26, 2024, the Honourable Mr. Justice Bock granted an Order approving, *inter alia*, a transaction pursuant to the Amended GGTI APA which included the rights to and ownership of the names "Genesus" and "Can-Am" (the "**Purchased Names**"). In order for GGTI to register and use the Purchased Names, Genesus and Can-Am must change their respective names through an amendment of Genesus' and Can-Am's respective Articles of Incorporation.

Second Report, Exh. A (Document No. 29)
Third Report, para 3 & 25

9. The Receiver requires additional powers in order to effect an amendment to Genesus' and Can-Am's respective Articles of Incorporation.

Third Report, para 25

10. Accordingly, the Receiver has brought the within motion seeking this Honourable Court's authorization and direction: (i) for the Receiver, Genesus and Can-Am to execute,

deliver any documents necessary or desirable to effect the name changes of Genesus and Can-Am (the "**Name Change**"), including the execution any articles of amendment, powers of attorney, resolutions, directions, or such other related or ancillary documents or instruments as may be required or are desirable for the completion and implementation of the said Name Change (the "**Amendment Documents**"); and (ii) for the Director appointed under the Corporations Act to accept and give effect to the Name Change and the Amendment Documents.

PART V. ARGUMENT

A. Should this Honourable Court authorize the Receiver, Genesus and Can-Am to execute and deliver the Amendment Documents?

11. Section 95(e) of the Corporations Act provides that upon appointment of a receiver and manager, this Honourable Court may make any order it deems fit, including "*an order giving directions on any matter relating to the duties of the receiver or receiver-manager*".

Corporations Act, s. 95(e) [Tab 3]

12. Sections 185(1) and (2) of the Corporations Act provide that if a corporation is subject to an Act of the Legislature that affects the rights among the corporation, its shareholders and its creditors "*its articles may be amended by the order [of the Court] to effect any change that might lawfully be made by an amendment under section 167*."

Corporations Act, ss. 185(1)-(2) [Tab 3]

13. Section 167(1)(a) of the Corporations Act provides that the articles of a corporation may be amended to change its name.

Corporations Act, s. 167(1)(a) [Tab 3]

14. The Receiver also respectfully submits that this Honourable Court has inherent jurisdiction to authorize the Receiver, Genesus and Can-Am to execute and deliver the Amended Documents.

15. In *Forage Subordinated Debt LP III v Enterra Feed Corporation et al*, Justice Romaine of the Court of King's Bench of Alberta discussed the Court's jurisdiction to order a reorganization within receivership proceedings pursuant to section 192 of Alberta's BCA, which is similar to section 185 of the Companies Act.

BCA, s. 192 [Tab 4]
***Forage Subordinated Debt LP III v Enterra Feed Corporation et al*., 2023 ABKB – Endorsement of the Honourable B.E. Romaine dated May 10, 2023 in File No. 2201 012953 (unreported) ("Enterra") at paras 36-45 [Tab 6]**

16. Justice Romaine found that there are two conditions required for a Court to order a reorganization under section 192 of the BCA:

> [37] There are two conditions for a reorganization under section 192 of the BCA to be approved by the Court. The corporation must be "subject to an order for reorganization", and the proposal amendments to its articles must be authorized by section 173 of the BCA. In the present case, both conditions are met: Raymor Industries Inc, Re, 2010 QCCs 376 at paras 49-52.
>
> [38] As contemplated by section 192(1)(c) of the BCA, where an order is made under an "act of the Legislature that affects the rights among the corporation, its shareholders and creditors", such order constitutes an order for reorganization: under the BCA, thereby authorizing the Court to approve the issuance of debt obligations and entitling the corporation to amend its articles to effect the reorganization. An order granted under section 13(2) of the Judicature Act qualifies for this purpose, as it empowers the receiver to take possession of the debtor's property and the proceeds thereof, take any steps necessary to preserve the property, and stay all rights and remedies of any person as against the debtor.

BCA, s. 192(1)(c) [Tab 4]
Judicature Act, s. 13(2) [Tab 5]
Enterra at paras 37-38 [Tab 6]

17. In the current circumstances, the two conditions required for a Court to order a for a reorganization are met, as:

1) The Receiver was appointed by this Honourable Court pursuant to section 243 of the BIA and section 55 of the KB Act, which is an act of the Legislature, and is similar to section 13(2) of Alberta's Judicature Act; and

2) The proposed amendments to Genesus and Can-Am's articles are authorized by section 167(1)(a) of the Corporations Act, which is similar to section 173(1)(a) of the BCA.

KB Act, s. 55 [Tab 1]
Judicature Act, s. 13(2) [Tab 5]
Corporations Act, s. 167(1)(a) [Tab 3]
BCA, s. 173(1)(a) [Tab 4]

18. Further, there have been cases in which Courts have ordered receivers to execute documents necessary to change the names of debtor companies in circumstances where the debtor companies' names were sold pursuant to a Court-approved sale. For example, in *Congress Financial Corporation (Canada) v American Sensors Electronics Inc*., [1999] O.J. No. 382, Mr. Justice Houlden of the Ontario Court of Justice had previously granted an Order (the "**NADI Order**"), *inter alia*, approving the sale of assets (the "**NADI Sale**") to North American Detectors Inc. ("**NADI**") by the Court-appointed receiver and manager of American Sensors Electronics Inc. ("**ASEI**") and American Sensors ("**ASI**").

***Congress Financial Corporation (Canada) v American Sensors Electronics Inc*., [1999] O.J. No. 382 ("American Sensors") at para 1 [Tab 7]**

19. The NADI Sale included the names of ASEI and ASI to NADI.

American Sensors, para 1 [Tab 7]

20. The NADI Order provided that, *inter alia*:

a. The articles and by-laws of ASEI would be amended so as to change its name under the *Business Corporations Act*, R.S.O. 1990, c. B16; and
b. The Receiver would execute documents to effect the completion of the transactions contemplated in the Order, <u>including the change of name of ASEI</u>.

American Sensors at para 1 [Tab 7]

21. Following the closing of the NADI Sale, the receiver and manager took the position that it did not have the authority or power to execute the articles required to change ASEI's name and that it was the directors of the companies who needed to sign the articles.

American Sensors, para 7 [Tab 7]

22. NADI made a motion before the Court seeking an Order directing the receiver and manager to execute the Articles of Reorganization in order to change the names of ASEI and ASI. The motion was heard by Mr. Justice Greer of the Ontario Court of Justice.

American Sensors, para 2 [Tab 7]

23. Justice Greer dismissed the receiver and manager's argument and Ordered that the receiver and manager execute the Articles of Re-Organization to effect the name changes based on, *inter alia*, his finding that the NADI Order specifically authorized the Receiver to do so.

American Sensors, para 8 [Tab 7]

24. Similar to American Sensor, in these circumstances, the GGTI Transaction and the sale of the GGTI Assets, including the Purchased Names have already been approved by this Honourable Court pursuant to the Order pronounced July 26, 2024, which provides that the "*Receiver is authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the [GGTI Transaction] and for the conveyance of the [GGTI Assets] to [GGTI]*."

Order pronounced July 26, 2024 at para 2 (Document No. 32)

25. Finally, the Receiver submits that Genesus and Can-Am have ceased operations, and no prejudice will be caused to any stakeholder from its execution and delivery of the Amending Documents in order to effect the Name Change. Additionally, this Motion and the materials filed in support thereof were served upon the Director and Chief Executive Officer of the Manitoba Companies Office.

Chapdelaine Affidavit

26. Based on the foregoing, the Receiver respectfully submits that this Honourable Court should authorize and direct the Receiver to authorize, execute and deliver the Amendment Documents necessary or desirable to effect the Name Change, and authorize and direct the Director appointed under the Corporations Act to accept and give effect to the Name Change and the Amendment Documents..

PART VI CONCLUSION

27. Based on the foregoing, the Receiver respectfully submits that this Honourable Court should authorize the Receiver, Genesus and Can-Am to authorize, execute and deliver the Amendment Documents, and authorize and direct the Director appointed under the Corporations Act to accept and give effect to the Name Change and the Amendment Documents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th DAY OF OCTOBER, 2024.

J.J. BURNELL / ANJALI SANDHU
MLT Aikins LLP
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M A N I T O B A

THE COURT OF KING'S BENCH ACT

C.C.S.M. c. C280

LOI SUR LA COUR DU BANC DU ROI

c. C280 de la *C.P.L.M.*

As of 28 Nov. 2023, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 28 nov. 2023. Son contenu était à jour pendant la période indiquée en bas de page.

PART X

INTERLOCUTORY PROCEEDINGS

Injunctions and receivers
55(1) The court may grant a restrictive or mandatory interlocutory injunction or may appoint a receiver or receiver and manager by an interlocutory order where it appears to the judge to be just or convenient to do so.

Terms on injunction or appointment
55(2) An order under subsection (1) may include such terms as are considered just.

No injunction re personal services
56(1) The court shall not grant an injunction which requires a person to work or perform personal services for an employer.

No contempt re personal services
56(2) No person shall be held in contempt of court by reason only of a refusal, neglect or failure of the person to work or perform personal services for an employer.

No injunction re freedom of speech
57(1) Subject to subsection (3), the court shall not grant an injunction that restrains a person from exercising the right to freedom of speech.

"Exercise right to freedom of speech"
57(2) For the purposes of this section, the communication by a person on a public thoroughfare of information by true statements, either orally or through printed material or through any other means, is an exercise of the right to freedom of speech.

PARTIE X

PROCÉDURES INTERLOCUTOIRES

Injonctions et séquestres
55(1) Le tribunal peut accorder une injonction interlocutoire de faire ou de ne pas faire ou peut nommer un séquestre ou un administrateur-séquestre au moyen d'une ordonnance interlocutoire, dans tous les cas où le juge estime qu'il est juste ou approprié d'agir ainsi.

Conditions
55(2) L'ordonnance prévue au paragraphe (1) peut être assortie des conditions que le tribunal estime justes.

Injonction portant sur des services personnels
56(1) Le tribunal ne peut accorder une injonction qui enjoint à une personne de travailler pour un employeur ou de lui rendre des services personnels.

Outrage au tribunal
56(2) Une personne ne peut être condamnée pour outrage au tribunal pour la seule raison qu'elle a refusé, négligé ou omis de travailler pour un employeur ou de lui rendre des services personnels.

Liberté d'expression
57(1) Sous réserve du paragraphe (3), le tribunal ne peut accorder une injonction qui restreint l'exercice de la liberté d'expression d'une personne.

Définition de l'« exercice de la liberté d'expression »
57(2) Pour l'application du présent article, la communication de renseignements qu'une personne fournit sur une voie publique au moyen de déclarations véridiques, soit verbalement, soit par documents imprimés ou par tout autre moyen, constitue un exercice de la liberté d'expression de cette personne.

CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to December 23, 2021

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Audit of proceedings

241 The accounts of every clerk that relate to proceedings under this Part are subject to audit in the same manner as if the accounts were the accounts of a provincial officer.

R.S., c. B-3, s. 212.

Application of this Part

242 (1) The Governor in Council shall, at the request of the lieutenant governor in council of a province, declare, by order, that this Part applies or ceases to apply, as the case may be, in respect of the province.

Automatic application

(2) Subject to an order being made under subsection (1) declaring that this Part ceases to apply in respect of a province, if this Part is in force in the province immediately before that subsection comes into force, this Part applies in respect of the province.

R.S., 1985, c. B-3, s. 242; 2002, c. 7, s. 85; 2007, c. 36, s. 57.

PART XI

Secured Creditors and Receivers

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

Vérification des comptes

241 Les comptes de chaque greffier, relatifs aux procédures prévues par la présente partie, sont sujets à vérification de la même manière que s'ils étaient les comptes d'un fonctionnaire provincial.

S.R., ch. B-3, art. 212.

Application

242 (1) À la demande du lieutenant-gouverneur en conseil d'une province, le gouverneur en conseil déclare par décret que la présente partie commence à s'appliquer ou cesse de s'appliquer, selon le cas, dans la province en question.

Application automatique

(2) Sous réserve d'une éventuelle déclaration faite en vertu du paragraphe (1) indiquant qu'elle cesse de s'appliquer à la province en cause, la présente partie s'applique à toute province dans laquelle elle était en vigueur à l'entrée en vigueur de ce paragraphe.

L.R. (1985), ch. B-3, art. 242; 2002, ch. 7, art. 85; 2007, ch. 36, art. 57.

PARTIE XI

Créanciers garantis et séquestres

Nomination d'un séquestre

243 (1) Sous réserve du paragraphe (1.1), sur demande d'un créancier garanti, le tribunal peut, s'il est convaincu que cela est juste ou opportun, nommer un séquestre qu'il habilite :

a) à prendre possession de la totalité ou de la quasi-totalité des biens — notamment des stocks et comptes à recevoir — qu'une personne insolvable ou un failli a acquis ou utilisés dans le cadre de ses affaires;

b) à exercer sur ces biens ainsi que sur les affaires de la personne insolvable ou du failli le degré de prise en charge qu'il estime indiqué;

c) à prendre toute autre mesure qu'il estime indiquée.

Restriction relative à la nomination d'un séquestre

(1.1) Dans le cas d'une personne insolvable dont les biens sont visés par le préavis qui doit être donné par le créancier garanti aux termes du paragraphe 244(1), le tribunal ne peut faire la nomination avant l'expiration d'un délai de dix jours après l'envoi de ce préavis, à moins :

M A N I T O B A

THE CORPORATIONS ACT

C.C.S.M. c. C225

LOI SUR LES CORPORATIONS

c. C225 de la *C.P.L.M.*

As of 4 Oct. 2024, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 4 oct. 2024. Son contenu était à jour pendant la période indiquée en bas de page.

(b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.

Directions given by court

95 Upon an application by a receiver or receiver-manager, whether appointed by a court or under an instrument, or upon an application by any interested person, a court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

(b) an order determining the notice to be given to any person or dispensing with notice to any person;

(c) an order fixing the remuneration of the receiver or receiver-manager;

(d) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation, or to relieve the person from any default on such terms as the court thinks fit, and to confirm any act of the receiver or receiver-manager;

(e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receiver and receiver-manager

96(1) A receiver or receiver-manager shall

(a) immediately notify the Director of his appointment or discharge;

(b) take into his custody and control the property of the corporation in accordance with the court order or instrument under which he is appointed;

(c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his control;

b) gérer, conformément aux pratiques commerciales raisonnables, les biens de la corporation qui se trouvent en sa possession ou sous son contrôle.

Directives du tribunal

95 À la demande du séquestre ou du séquestre-gérant, conventionnel ou judiciaire, ou de tout intéressé, le tribunal peut, par ordonnance, prendre les mesures qu'il estime pertinentes et notamment :

a) nommer, remplacer ou décharger de leurs fonctions le séquestre ou le séquestre-gérant et approuver leurs comptes;

b) dispenser de donner avis ou préciser les avis à donner;

c) fixer la rémunération du séquestre ou du séquestre-gérant;

d) enjoindre au séquestre, au séquestre-gérant ainsi qu'aux personnes qui les ont nommés ou pour le compte desquelles ils l'ont été de réparer leurs fautes ou les en dispenser, notamment en matière de garde des biens ou de gestion de la corporation, selon les modalités qu'il estime pertinentes, et d'entériner les actes du séquestre ou séquestre-gérant;

e) donner des directives concernant les fonctions du séquestre ou du séquestre-gérant.

Obligations du séquestre et du séquestre-gérant

96(1) Le séquestre ou le séquestre-gérant doit :

a) aviser immédiatement le directeur tant de sa nomination que de la fin de son mandat;

b) prendre sous sa garde et sous son contrôle les biens de la corporation conformément à l'ordonnance ou à l'acte de nomination;

c) avoir, à son nom, et en cette qualité, un compte bancaire pour tous les fonds de la corporation assujettis à son contrôle;

PART XIV

FUNDAMENTAL CHANGES

Amendment of articles

167(1) Subject to sections 170 and 171, the articles of a corporation may by special resolution be amended to

(a) change its name; or

(b) add, change or remove any restriction upon the business or businesses that the corporation may carry on; or

(c) change any maximum number of shares that the corporation is authorized to issue and change, if desired, the maximum consideration for which the shares may be issued; or

(d) create new classes of shares; or

(e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued; or

(f) reduce or increase its stated capital which, for the purposes of the amendment, is deemed to be set out in the articles; or

(g) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series; or

(h) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof; or

(i) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof; or

PARTIE XIV

MODIFICATIONS DE STRUCTURE

Modification des statuts

167(1) Sous réserve des articles 170 et 171, les statuts de la corporation peuvent, par résolution spéciale, être modifiés afin :

a) d'en changer la dénomination sociale;

b) d'apporter, de modifier ou de supprimer toute restriction quant à ses entreprises;

c) de modifier le nombre maximal d'actions qu'elle est autorisée à émettre et de modifier, au besoin, l'apport maximal en contrepartie duquel les actions peuvent être émises;

d) de créer de nouvelles catégories d'actions;

e) de modifier la désignation de tout ou partie de ses actions, et d'ajouter, de modifier ou de supprimer tout droit, privilège, restriction et condition, y compris le droit à des dividendes accumulés, concernant tout ou partie de ses actions, émises ou non;

f) de réduire ou d'augmenter son capital déclaré qui, aux fins de la modification, est réputé figurer dans les statuts;

g) de modifier le nombre d'actions, émises ou non, d'une catégorie ou d'une série ou de les changer de catégorie ou de série;

h) de diviser en séries une catégorie d'actions, émises ou non, en indiquant le nombre d'actions par série ainsi que les droits, privilèges, restrictions et conditions dont elles sont assorties;

i) d'autoriser les administrateurs à diviser en séries une catégorie d'actions non émises, en indiquant le nombre d'actions par série ainsi que les droits, privilèges, restrictions et conditions dont elles sont assorties;

(j) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series; or

(k) revoke, diminish or enlarge any authority conferred under clauses (i) and (j); or

(l) add, change or remove restrictions on the issue, transfer or ownership of shares; or

(m) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

j) d'autoriser les administrateurs à modifier les droits, privilèges, restrictions et conditions dont sont assorties les actions non émises d'une série;

k) de révoquer ou de modifier les autorisations conférées en vertu des alinéas i) et j);

l) d'apporter, de modifier ou de supprimer des restrictions quant à l'émission, au transfert ou à l'appartenance des actions;

m) d'ajouter, de modifier ou de supprimer toute autre disposition que la présente loi autorise à y insérer.

Corporation with or without share capital
167(2) The articles of a corporation may, by resolution, be amended

(a) to convert a corporation with share capital into a corporation without share capital; or

(b) to convert a corporation without share capital into a corporation with share capital; or

(c) to vary or remove any provision contained in the articles of a corporation without share capital, which states that upon dissolution its remaining property may be distributed among all the members or among the members of a class or classes of members, to one which states that upon dissolution the remaining property shall be distributed to an organization the undertaking of which is charitable or of a beneficial nature to the community.

Corporation avec ou sans capital-actions
167(2) Les statuts d'une corporation peuvent, par résolution, être modifiés afin :

a) de transformer une corporation avec capital-actions en une corporation sans capital-actions;

b) de transformer une corporation sans capital-actions en une corporation avec capital-actions;

c) de modifier ou d'enlever une disposition contenue dans les statuts d'une corporation sans capital-actions, laquelle disposition stipule qu'à la dissolution de la corporation le reliquat de ses biens peut être réparti entre tous les membres ou entre les membres d'une catégorie ou de catégories de membres et la remplacer par une disposition qui stipule qu'à la dissolution le reliquat des biens doit être remis à un organisme dont l'activité est charitable ou profite à la collectivité.

Resolution
167(3) The resolution required under subsection (2) shall be signed by all the shareholders or members of the corporation, or shall be passed by the votes of 95% of the issued shares or membership of the corporation.

Résolution
167(3) La résolution prévue au paragraphe (2) doit être signée par tous les actionnaires ou membres de la corporation ou être adoptée par les votes de 95 % des actions que la corporation a émises ou par 95 % des membres de la corporation.

Formula for conversion
167(4) The articles of amendment shall contain the formula, terms and conditions upon which the shareholders become members or the members become shareholders.

Clerical errors
167(5) Notwithstanding subsection (1), the articles of a corporation may by resolution of the directors or by ordinary resolution of the shareholders be amended

(a) to correct any clerical error; or

(b) to change the name of the corporation where it has a designating number as a name.

Article of amendment to be filed
167(6) Articles of amendment shall be filed with the Director within six months of the date of the resolution of the shareholders authorizing the amendment, failing which the Director shall refuse to file the articles.

Special Act corporation
167(7) A corporation incorporated by special Act shall not under this section amend its articles, except to change its name.

Revocation of amending resolution
167(8) The directors of a corporation may, if authorized by the shareholders in any resolution effecting an amendment under this section, revoke the resolution before it is acted upon without further approval of the shareholders.

Resolution of directors
167(9) Notwithstanding subsection (1), a corporation may by resolution of the directors change or delete the maximum consideration for which each share or each class of shares or all the shares may be issued, but the resolution is not effective until articles are filed with the Director.

R.S.M. 1987 Supp., c. 10, s. 10; S.M. 1988-89, c. 13, s. 6; S.M. 1989-90, c. 90, s. 5.

Procédure de transformation
167(4) Les clauses modificatrices doivent contenir la procédure et les modalités suivant lesquelles les actionnaires deviennent membres ou les membres deviennent actionnaires.

Erreurs d'écriture
167(5) Malgré le paragraphe (1), les statuts d'une corporation peuvent, par résolution des administrateurs ou par résolution ordinaire des actionnaires, être modifiés :

a) soit pour corriger une erreur d'écriture;

b) soit pour changer la dénomination de la corporation lorsque celle-ci a une dénomination sociale numérique.

Dépôt des clauses modificatrices
167(6) Les clauses modificatrices doivent être déposées auprès du directeur dans les six mois suivant la date de la résolution des actionnaires autorisant la modification, à défaut de quoi le directeur doit les refuser.

Corporation constituée par loi spéciale
167(7) Une corporation constituée par loi spéciale ne peut modifier ses statuts sous le régime du présent article, sauf pour changer sa dénomination sociale.

Annulation
167(8) Les administrateurs peuvent, si les actionnaires les y autorisent par une résolution prévue au présent article, annuler la résolution avant qu'il n'y soit donné suite.

Résolution des administrateurs
167(9) Malgré le paragraphe (1), une corporation peut, par résolution des administrateurs, modifier ou supprimer l'apport maximal en contrepartie duquel chaque action ou chaque catégorie d'actions ou toutes les actions peuvent être émises. Toutefois, la résolution n'a d'effet que lorsque les clauses sont déposées auprès du directeur.

Suppl. L.R.M. 1987, c. 10, art. 10; L.M. 1988-89, c. 13, art. 6.

Definitions
185(1) In this section,

"arrangement" includes

(a) an amendment to the articles of a corporation;

(b) an amalgamation of two or more corporations;

(c) a division of the business carried on by a corporation;

(d) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;

(e) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid to which *The Securities Act* applies;

(f) a liquidation and dissolution of a corporation; and

(g) any combination of the foregoing; (« arrangement »)

"reorganization" means a court order made under

(a) section 234; or

(b) the *Bankruptcy Act* (Canada), approving a proposal; or

(c) any other Act of the Legislature that affects the rights among the corporation, its shareholders and creditors. (« réorganisation »)

Définitions
185(1) Les définitions qui suivent s'appliquent au présent article.

« arrangement » S'entend également de :

a) la modification des statuts d'une corporation;

b) la fusion de corporations;

c) le fractionnement de l'entreprise d'une corporation;

d) la cession de la totalité ou de la quasi-totalité des biens d'une corporation à une autre personne morale moyennant du numéraire, des biens ou des valeurs mobilières de celle-ci;

e) l'échange de valeurs mobilières de la corporation détenues par un créancier gagiste contre des biens, du numéraire ou d'autres valeurs mobilières soit de la corporation, soit d'une autre personne morale, pourvu que l'opération ne réponde pas à une offre d'achat visant à la mainmise à laquelle la *Loi sur les valeurs mobilières* s'applique;

f) la liquidation et la dissolution d'une corporation;

g) une combinaison des opérations susvisées. ("arrangement")

« réorganisation » Ordonnance que le tribunal rend en vertu :

a) soit de l'article 234;

b) soit de la *Loi sur la faillite* (Canada) pour approuver une proposition;

c) soit de toute loi de la Législature touchant les rapports de droit entre la corporation, ses actionnaires et ses créanciers. ("reorganization")

Powers of court
185(2) If a corporation is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 167.

Pouvoirs du tribunal
185(2) L'ordonnance rendue conformément au paragraphe (1) à l'égard d'une corporation peut effectuer dans ses statuts les modifications prévues à l'article 167.

Further powers
185(3) If a court makes an order referred to in subsection (1), the court may also

(a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

Pouvoirs supplémentaires
185(3) Le tribunal qui rend l'ordonnance visée au paragraphe (1) peut également :

a) autoriser, en en fixant les modalités, l'émission de titres de créance convertibles ou non en actions de toute catégorie ou assortis du droit ou de l'option d'acquérir de telles actions;

b) ajouter d'autres administrateurs ou remplacer ceux qui sont en fonction.

Articles of reorganization
185(4) After an order referred to in subsection (1) has been made, the corporation shall send the Director articles of reorganization in the form the Director requires.

Réorganisation
185(4) Après le prononcé de l'ordonnance visée au paragraphe (1), la corporation envoie au directeur, en la forme qu'il détermine, des clauses de réorganisation.

Certificate of reorganization
185(5) Upon the receipt of articles of reorganization, the Director shall issue a certificate of amendment in accordance with section 255.

Certificat
185(5) Sur réception des clauses de réorganisation, le directeur délivre un certificat de modification en conformité avec l'article 255.

Effect of certificate
185(6) A reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

Effet du certificat
185(6) La réorganisation prend effet à la date figurant sur le certificat de modification; les statuts constitutifs sont modifiés en conséquence.

No dissent
185(7) A shareholder is not entitled to dissent under section 184 if an amendment to the articles of incorporation is effected under this section.

Pas de dissidence
185(7) Les actionnaires ne peuvent invoquer l'article 184 pour faire valoir leur dissidence à l'occasion de la modification des statuts constitutifs conformément au présent article.

Where corporation insolvent
185(8) For the purposes of this section, a corporation is insolvent

(a) where it is unable to pay its liabilities as they become due; or

Cas d'insolvabilité de la corporation
185(8) Pour l'application du présent article, une corporation est insolvable dans l'un ou l'autre des cas suivants :

(b) where the realizable value of the assets of the corporation are less than the aggregate of its liabilities and stated capital of all classes.

a) lorsqu'elle ne peut acquitter son passif à échéance;

b) lorsque la valeur de réalisation de son actif est inférieure à la somme de son passif et du capital déclaré afférent à toutes les catégories d'actions.

Application to court for approval of arrangement
185(9) Where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to a court for an order approving an arrangement proposed by the corporation.

Demande d'approbation au tribunal
185(9) Lorsque la corporation qui n'est pas insolvable n'est pas en mesure d'opérer, en vertu d'une autre disposition de la présente loi, une modification de structure équivalente à un arrangement, elle peut demander au tribunal d'approuver par ordonnance, l'arrangement qu'elle propose.

Powers of court
185(10) In connection with an application under subsection (9), the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

(a) an order determining the notice to be given to an interested person or dispensing with notice to any person other than the Director;

(b) an order appointing counsel, at the expense of the corporation, to represent the interests of the shareholders;

(c) an order requiring a corporation to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs;

(d) an order permitting a shareholder to dissent under section 184;

(e) an order approving an arrangement as proposed by the corporation or as amended in any manner the court may direct.

Pouvoir du tribunal
185(10) Le tribunal saisi d'une demande en vertu du paragraphe (9) peut rendre toute ordonnance provisoire ou finale en vue notamment :

a) de prévoir l'avis à donner aux intéressés ou de dispenser de donner avis à toute personne autre que le directeur;

b) de nommer, aux frais de la corporation, un avocat pour défendre les intérêts des actionnaires;

c) d'enjoindre à la corporation, selon les modalités qu'il fixe, de convoquer et de tenir une assemblée des détenteurs de valeurs mobilières, d'options ou de droits d'acquérir des valeurs mobilières;

d) d'autoriser un actionnaire à faire valoir sa dissidence en vertu de l'article 184;

e) d'approuver ou de modifier, selon ses directives, l'arrangement proposé par la corporation.

Notice to Director
185(11) An applicant under subsection (9) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

Avis au directeur
185(11) La personne qui présente une demande en vertu du paragraphe (9) doit en donner avis au directeur et celui-ci peut comparaître en personne ou par l'intermédiaire d'un avocat.

Articles of arrangement
185(12) After an order referred to in clause (10)(e) has been made, the corporation shall send the Director articles of arrangement, in the form the Director requires, together with the documents required by sections 19 and 108, if applicable.

Certificate of amendment
185(13) Upon receipt of articles of arrangement, the Director shall issue a certificate of amendment in accordance with section 255.

Effect of certificate
185(14) An arrangement becomes effective on the date shown in the certificate of amendment.

S.M. 2006, c. 10, s. 30.

Clauses de l'arrangement
185(12) Dès le prononcé de l'ordonnance visée à l'alinéa (10)e), la corporation envoie au directeur, en la forme qu'il détermine, les clauses de l'arrangement ainsi que, le cas échéant, les documents exigés par les articles 19 et 108.

Certificat de modification
185(13) Dès réception des clauses de l'arrangement, le directeur délivre un certificat de modification conformément à l'article 255.

Prise d'effet de l'arrangement
185(14) L'arrangement prend effet à la date figurant sur le certificat de modification.

L.M. 2006, c. 10, art. 30.

Province of Alberta

BUSINESS CORPORATIONS ACT

Revised Statutes of Alberta 2000
Chapter B-9

Current as of December 7, 2023

Office Consolidation

Alberta King's Printer
Suite 700, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952

E-mail: kings-printer@gov.ab.ca
Shop on-line at kings-printer.alberta.ca

(9) When under subsection (8) the auditor or a former auditor informs the directors of an error or misstatement in a financial statement,

(a) the directors shall prepare and issue revised financial statements or otherwise inform the shareholders, and

(b) if the corporation is a reporting issuer, the corporation shall file the revised financial statements with the Executive Director or inform the Executive Director of the error or misstatement in the same manner that the shareholders were informed of it.

(10) Every director or officer of a corporation who knowingly contravenes subsection (7) or (9) is guilty of an offence and liable to a fine of not more than $5000 or to imprisonment for a term of not more than 6 months or to both.

RSA 2000 cB-9 s171;2021 c18 s71

Qualified privilege

172 Any oral or written statement or report made under this Act by the auditor or a former auditor of a corporation has qualified privilege.

1981 cB-15 s166

Part 14
Fundamental Changes

Amendment of articles

173(1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to

(a) change its name, subject to section 12,

(b) add, change or remove any restriction on the business or businesses that the corporation may carry on,

(b.1) waive, or modify or revoke a waiver, in an interest, expectancy or offer under section 16.1,

(c) change any maximum number of shares that the corporation is authorized to issue,

(d) create new classes of shares,

(e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,

(f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,

(g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(h) cancel a class or series of shares where there are no issued or outstanding shares of that class or series,

(i) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(j) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,

(k) revoke, diminish or enlarge any authority conferred under clauses (i) and (j),

(l) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112,

(m) subject to section 48(8), add, change or remove restrictions on the transfer of shares,

(m.1) add or remove an express statement establishing the unlimited liability of shareholders as set out in section 15.2, or

(n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

(3) Notwithstanding subsection (1), but subject to section 12, where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

RSA 2000 cB-9 s173;2005 c8 s42;2021 c18 s43

full rights as a shareholder, failing which the shareholder retains a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

(20) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that

(a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would by reason of the payment be less than the aggregate of its liabilities.

RSA 2000 cB-9 s191;2005 c40 s7;2009 c53 s30

Part 15
Corporate Reorganization and Arrangements

Articles of reorganization resulting from court order

192(1) In this section, "order for reorganization" means an order of the Court made under

(a) section 242,

(b) the *Bankruptcy and Insolvency Act* (Canada) approving a proposal, or

(c) any other Act of the Parliament of Canada or an Act of the Legislature that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order for reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 173.

(3) If the Court makes an order for reorganization, the Court may also

(a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations, and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After an order for reorganization has been made, articles of reorganization in the form required by the Registrar shall be sent to the Registrar together with the documents required by sections 20 and 113, if applicable.

(5) On receipt of articles of reorganization, the Registrar shall issue a certificate of amendment in accordance with section 267.

(6) An order for reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) A shareholder is not entitled to dissent under section 191 if an amendment to the articles of incorporation is effected under this section.

RSA 2000 cB-9 s192;2021 c18 s73

Court-approved arrangements

193(1) In this section, "arrangement" includes, but is not restricted to,

(a) an amendment to the articles of a corporation,

(b) an amalgamation of 2 or more corporations,

(c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act,

(d) a division of the business carried on by a corporation,

(e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate,

(f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid as defined in section 194,

(g) a liquidation and dissolution of a corporation,

(h) a compromise between a corporation and its creditors or any class of its creditors or between a corporation and the holders of its shares or debt obligations or any class of those holders, or

(i) any combination of the foregoing.

Province of Alberta

JUDICATURE ACT

Revised Statutes of Alberta 2000
Chapter J-2

Current as of April 1, 2023

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Alberta King's Printer
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10611 - 98 Avenue
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General jurisdiction

8 The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

RSA 1980 cJ-1 s8

Province-wide jurisdiction

9 Each judge of the Court has jurisdiction throughout Alberta, and in all causes, matters and proceedings, other than those of the Court of Appeal, has and shall exercise all the powers, authorities and jurisdiction of the Court.

RSA 1980 cJ-1 s9

Part 2
Powers of the Court

Relief against forfeiture

10 Subject to appeal as in other cases, the Court has power to relieve against all penalties and forfeitures and, in granting relief, to impose any terms as to costs, expenses, damages, compensation and all other matters that the Court sees fit.

RSA 1980 cJ-1 s10

Declaration judgment

11 No proceeding is open to objection on the ground that a judgment or order sought is declaratory only, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

RSA 1980 cJ-1 s11

Canadian law

12 When in a proceeding in the Court the law of any province or territory is in question, evidence of that law may be given, but in the absence of or in addition to that evidence the Court may take judicial cognizance of that law in the same manner as of any law of Alberta.

RSA 1980 cJ-1 s12

Part performance

13(1) Part performance of an obligation either before or after a breach thereof shall be held to extinguish the obligation

(a) when expressly accepted by a creditor in satisfaction, or

(b) when rendered pursuant to an agreement for that purpose though without any new consideration.

(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.

RSA 1980 cJ-1 s13

Interest

14(1) In addition to the cases in which interest is payable by law or may be allowed by law, when in the opinion of the Court the payment of a just debt has been improperly withheld and it seems to the Court fair and equitable that the party in default should make compensation by the payment of interest, the Court may allow interest for the time and at the rate the Court thinks proper.

(2) Subsection (1) does not apply in respect of a cause of action that arises after March 31, 1984.

RSA 1980 cJ-1 s15;1984 cJ-0.5 s10

Equity prevails

15 In all matters in which there is any conflict or variance between the rules of equity and common law with reference to the same matter, the rules of equity prevail.

RSA 1980 cJ-1 s16

Equitable relief

16(1) If a plaintiff claims to be entitled

(a) to an equitable estate or right,

(b) to relief on an equitable ground

(i) against a deed, instrument or contract, or

(ii) against a right, title or claim whatsoever asserted by a defendant or respondent in the proceeding,

or

(c) to any relief founded on a legal right,

the Court shall give to the plaintiff the same relief that would be given by the High Court of Justice in England in a proceeding for the same or a like purpose.

(2) If a defendant claims to be entitled

Court of King's Bench of Alberta

Citation: Forage Subordinated Debt LP v Enterra Feed Corporation, 2023 ABKB

Date:
Docket: 2201 012953
Registry: Calgary

Between:

Forage Subordinated Debt LP III

Plaintiff

- and -

Enterra Feed Corporation, Enterra Feed US Corporation, Enterra Feed US Sales Corporation, and Enterra Feed Marion Corporation

Defendants

Endorsement
of the
Honourable Justice B.E. Romaine

I. Introduction

[1] FTI Consulting Canada Inc., as the court-appointed Receiver and Manager of Enterra Feed Corporation, seeks an order: i) approving a reverse vesting order (RVO) included in an Amended Subscription Agreement among Enterra, as issuer, Forage Subordinated Debt LP III as purchaser, and 2488172 Alberta Ltd. (ResidualCo"); ii) authorizing Enterra, ResidualCo and the Receiver to take any and all such steps as are necessary or advisable to implement and close the transaction contemplated by the Amended Subscription Agreement and (iii) transferring and vesting all of Enterra's right, title and interest in and to the Excluded Assets and the Excluded Liabilities (as defined in the Amended Subscription Agreement) in the name of ResidualCo, subject to encumbrances as defined in the agreement. At issue is whether this is one of the exceptional cases where an RVO may be appropriate, whether section 67 of the *Financial*

Administration Act, (Canada) R.S.C. 1985, c. F-11 (FAA) prevents the approval of the transaction, and whether an RVO can be approved in a receivership.

[2] An RVO transaction is an extraordinary remedy that should only be granted in exceptional cases. I am satisfied that, given the adjustments that have been made over the last weeks to this transaction, this is one of those exceptional cases that would allow the approval of an RVO. The fact that this remedy is sought in a receivership does not preclude approval of the RVO structure, and section 67 of the FAA does not apply.

II. Facts

[3] Enterra was engaged in the business of sustainable insect production for the purposes of selling animal feed and pet food to agricultural customers. The company employed approximately 24 people and carried on business at a leased facility in Alberta. The company also operated a research and development facility from a leased property in British Columbia.

[4] On September 8, 2022, Enterra delivered a Notice of Event of Default to its principal secured creditor, Forage, wherein it advised that it had resolved to proceed with an orderly winding down of its business and operations due to lack of funding, and that this would result in an event of default under the Forage loan agreement. On the same day, Forage sent a demand for repayment and Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-6, to the company.

[5] In order to preserve assets, the Receiver was appointed on November 8, 2022

[6] The following efforts had been implemented prior to the appointment of the Receiver:

(a) the appointment of a Chief Restructuring Officer on September 9, 2022;
(b) the marketing of the company and its assets to potentially interested parties through a pre-receivership solicitation and investment solicitation process (SISP) conducted by the CRO: and
(c) the provision of $450,000 in subordinated financing by major shareholders to provide immediate liquidity funding for the SISP on September 27, 2022.

[7] As at the date of the receivership, all of Enterra's directors had resigned. The CRO has been appointed as director for the limited purpose of effecting the transaction.

[8] The remaining assets of Enterra include intellectual property, specifically:

- software source code and source materials;
- business names, trade names, domain names, trading names, trading style, logos, trade secrets, industrial designs and copyrights;
- inventions, formulae, product formulations, processes and processing methods, technology and techniques;
- know-how, trade secrets, research and technical data; and
- studies, finds, algorithms, instructions, guides, manuals and designs.

[9] The Amended Subscription Agreement provides that:

(a) Enterra will be cleansed of the majority of its liabilities through the mechanism of an RVO whereby ResidualCo will assume the Excluded Liabilities and take an assignment of the Excluded Assets;
(b) Enterra will issue shares to Forage; and
(c) the purchase price paid by Forage to Enterra for the shares will be the aggregate of i) the subscription cash, plus (ii) the credit bid amount, plus (iii) the Retained Liabilities.

[10] The Crown had initially argued that the original transaction had made it worse off than it would have been under a variable alternative.

[11] As a result of negotiations between the Crown, a subordinate creditor as represented by the Minister Responsible for Western Economic Diversification Canada and the Receiver , certain Scientific Research and Experimental Development (SR&ED) tax credits of approximately $354,146 available to reduce future years' taxable income and SR&ED expenditures of approximately $6,385,767 available to be carried forward indefinitely have been assigned to ResidualCo, together with the Excluded Liabilities, Enterra's loss carry forward of approximately $50 million has also been assigned to ResidualCo. Analysis

A. Is an RVO transaction appropriate?

[12] I note the following relevant factors:

i. this is an unusual business that would only be of value to a limited number of prospective purchasers;
ii. a pre-receivership SISP was conducted and, although it appears to have been a reasonable and sufficient effort, it attracted only two offers that were materially less than the secured debt. Ultimately, negotiations with these two interested parties failed;
iii. a new SISP would be unlikely to attract new offers, and, at any rate, the Receiver has limited liquidity available; and
iv. an unsolicited offer early this year proved to be conditional and offered insufficient consideration.

[13] In ***Harte Gold Corp (Re)***, 2022 ONSC 653 at para 38, the Court set out certain questions that a court-appointed officer overseeing an RVO transaction should be prepared to answer, in addition to the usual factors set out in ***Royal Bank of Canada v. Soundair Corp. (1991)***, 1991 CanLII 2727 (ONCA) relating to the approval of the sale of assets in an insolvency scenario. These questions are as follows:

i. Why is the RVO necessary in this case?
ii. Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
iii. Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative? and;
iv. Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?

[14] Forage, the senior secured creditors, is materially under-secured and no other subordinate creditors would receive any returns or distribution under any alternative. In the opinion of the Receiver, given the lack of a viable offer and with no viable alternative to the transaction, the transaction offers fair value in the circumstances, and the Receiver recommends it from an economic point of view. There is no issue with the integrity of the sales process.

[15] The preliminary issue of whether the RVO would result in the Crown being worse off under the RVO structure has been resolved in the Amended Subscription Agreement. Therefore no stakeholder is worse off under the RVO structure than it would have been under any other viable alternative.

[16] The Crown submits that bankruptcy would be an appropriate alternative to the RVO structure.

[17] Bankruptcy is not a viable option in this case. There is no extant petition for bankruptcy, and the stay under the receivership prevents a petition from being filed. While the bankruptcy alternative may be preferrable for the Crown, it would prejudice the other stakeholders as it would prevent the preservation of the value of the intellectual property assets of Enterra, and the continuation of the business.

[18] I therefore find that an RVO would be an acceptance alternative in this case. It is critical to the viability of the transaction, sufficient efforts have been made to obtain the best consideration available for the assets, it facilitates the transfer of intellectual property without additional costs, and the result is that Enterra will carry on business.

B. Does section 67 of the FAA prevent the transaction?

[19] The Crown submits that section 67 of the FAA prohibits the approval of the Amended Subscription Agreement.

[20] This is an issue, not only for an RVO transaction, but for any receivership or *Companies' Creditors Arrangement Act* transaction that is subject to court approval and involves debt governed by the FAA.

[21] Section 67 of the FAA provides as follows:

> (a) a Crown debt is not assignable; and
>
> (b) no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt.

[22] The Receiver submits that section 67 does not apply in this case, relying on ***PCAS Patient Care Automation Services Inc. (Re)***, 2012 ONSC 3367. The Crown disagrees.

[23] *PCAS* involved an application under the *CCAA*. One of the issues was whether section 67 of the FAA blocked a part of the vesting of assets under a purchase and sale agreement. Certain Crown debts were to be assigned to the DIP lender, including refundable tax credit entitlements, certain provincial tax credit refunds and harmonized sales tax (HST) refunds.

[24] Counsel to the Monitors in that case provided an opinion that the assignment of the SR&ED tax credits and the provincial tax credits was valid, but that the HST refunds may not be assignable because there was no provisions under the *Excise Tax Act (Canada)* or the FAA that exempted the refunds from section 67 of the FAA: para 59.

[25] Justice Brown noted that, in accordance with the initial order under the CCAA, the DIP lender was granted a charge on the property of the debtors, including their entitlement to the HST refund, in the event of a failure of their security.

[26] He referenced the Supreme Court's decision in ***Bank of Montreal v iTrade Finance Inc***.,[2011] 2 S.C.R. 360 at para 30. The *Bank of Montreal* case involved the issue of whether a provision of the PPSA referring to "a transaction... that in substance creates a security interest" applied. The Court found that, since iTrade had acquired rights as a result of a judgment granting them a constructive trust or equitable lien, these rights thus arose from a court order, not from a "transaction".

[27] It is noteworthy that the reasoning of the Court did not rely on whether there was provision in a provincial statute that over-rode the PPSA, but merely on the fact that rights acquired through a court order are not a "transaction".

[28] Following this decision, Brown, J. found that Section 67 of the FAA did not prevent the assignment of the HST refund to the DIP lender because section 67 of the FAA only renders ineffective any "transaction purporting to be an assignment of a Crown debt", and the DIP lender's charge created by the initial order was not such a "transaction". He noted that "(s)ection 67 of the FAA does not apply to rights created by a Court order, including a DIP lending charge granted over all of the companies' property". He referred to his discretion under section 11 of the CCAA to make such an order.

C. Can an RVO transaction be approved in a receivership?

[29] The Crown seeks to distinguish the PCAS decision on the basis that this case is a receivership, rather than a proceeding under the CCAA, and that thus, the Court does not have the statutory authority found in section 11 of the CCAA to make the order.

[30] However, as noted by the Receiver, the statutory jurisdiction to approve the Amended Subscription Agreement and grant the RVO can be found through the interplay of section 13(2) of the Judicature Act, RSA 2000, c J-2, section 192(1) of the *Business Corporation Act* (Alberta), RSA 2000, C B-9, s.192 (i), and section 64 of the *Personal Property Security Act* (PPSA), RSA 2000, c P-7.The Receiver was appointed pursuant to the provisions of these statutes.

[31] The ability of a Court to appoint a receiver under the *Judicature Act* is well established, Section 13(2) allows the Court to grant an order appointing a receiver "in all cases in which it appears to the Court to be just and convenient" and provides that the "order may be made either unconditionally or on any terms and conditions the Court think just ": ***BG International Limited v Canadian Superior Energy***, 2009 ABCA 127.

[32] The authority of the Court is wide-ranging: ***DGDP-BC Holdings Ltd. V Third Eye Capital Corporation***, 2021 ABCA 226 at para 17. The Alberta Court of Appeal in *DGDP-BC Holdings* equated the open-ended jurisdiction granted to the Court under section 13(2) of the *Judicature Act* to the authority granted to the supervising judge under section 243(1)(c) of the *Bankruptcy and Insolvency Act*, which authorises the supervising judge to "take any other action that the court considers advisable".

[33] Although not expressly provided for in section 13(2) of the *Judicature Act*, the wide-ranging authority granted to the Court under such provision provides this Court with the jurisdiction to grant vesting orders.

[34] The Ontario Court of Appeal in ***Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc***., 2019 ONCA 508 at paras 40-41, recognized that section 100 of the Courts of Justice Act, which is materially equivalent to the *Judicature Act*, gives the Court "the power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principals of equity" and "provided that there is a basis on which to grant vesting property in a purchaser". Further, in ***Bonora v Ivancic***, 2019 ONSC 6352 at para 24, the Ontario Superior Court relied on ***Dianor*** and held that this provision provides the Court with "the power necessary" to vest out any interest of a mortgagee.

[35] Therefore, while the *Judicature Act* is provincial legislation, it provides this Court with the jurisdiction to approve the RVO structure. Therefore, the transfer of the SR&ED credits to ResidualCo is the result of a court order and not merely arising from a "transaction", and the reasoning in the PCAS decision applies.

[36] As part of the Amended Subscription Agreement, the Receiver is seeking an "order for re-organization" in respect of Enterra under section 192 of the *Business Corporations Act*. RVO transactions under the CCAA have relied on section 11 of that statute to effect fundamental changes to the corporate structure, including vesting the equity interests of out of the money shareholders for no consideration. When a debtor corporation is, as here, clearly insolvent, the same outcome is possible through an "order for reorganization" under the BCA, albeit through a different process.

[37] There are two conditions for a reorganization under section 192 of the BCA to be approved by the Court. The corporation must be "subject to an order for reorganization", and the proposal amendments to its articles must be authorized by section 173 of the BCA. In the present case, both conditions are met: ***Raymor Industries Inc***, Re, 2010 QCCs 376 at paras 49-52.

[38] As contemplated by section 192(1)(c) of the BCA, where an order is made under an "act of the Legislature that affects the rights among the corporation, its shareholders and creditors", such order constitutes an "order for reorganization: under the BCA, thereby authorizing the Court to approve the issuance of debt obligations and entitling the corporation to amend its articles to effect the reorganization. An order granted under section 13(2) of the *Judicature Act* qualifies for this purpose, as it empowers the receiver to take possession of the debtor's property and the proceeds thereof, take any steps necessary to preserve the property, and stay all rights and remedies of any person as against the debtor.

[39] In addition, PPSA is an act of the legislature that affects rights among the corporation, its shareholders and creditors, and, therefore, an order granted under the PPSA also constitutes an "order for reorganization" under section 192(1)(c) of the BCA.

[40] The codification of rights and obligations under the PPSA includes enforcement rights of secured parties against a non performing debtor. The enforcement of such rights against a corporate debtor will affect the rights of the corporation and its shareholders: Part V of the PPSA (sections 55-65). Pursuant to section 64(e) of the PPSA, this Court is authorized to "make any order that is necessary to ensue the protection of the interest of any person in the collateral".

[41] In ***GE Canada Assets Financing Holding Company v JM. Wood Investment Ltd.***, the Court held that section 64 gives the Court wide supervisory power and concluded that section 64 provided the Court with the discretion to make declaratory and consequential orders in the context of security enforcement.

[42] Comparable provisions to section 192 of the BCA have also been interpreted to provide the court with the authority to approve the cancellation of outstanding shares in the context of an RVO. In ***Harte Gold Corp. (Re)***, the Ontario Superior Court held that section 186(1) of the *Ontario Business Corporation Act* "provides the jurisdiction of the court to approve the cancellation of all outstanding shares and the issuance of new shares to the purchaser". While ***Harte Gold*** was decided in a CCAA proceeding, the jurisdiction of the court to authorize a reorganization that affects the rights associated with the shares of the corporation also applies in the context of a receivership proceeding.

[43] In this reorganization, the issued and outstanding common shares of Enterra will be amended by the addition of a right that permits redemption by Enterra for nominal consideration. Enterra will immediately exercise such right of redemption.

[44] Shareholder approval is not a relevant consideration for a court in approving articles of incorporation. At any rate, in Enterra's insolvent circumstances, its shareholders do not have an economic interest in the insolvent corporation. Shareholder are not entitled to dissent in the case of reorganization under section 192(7) of the BCA and cannot defeat a proposal or an arrangement contemplating a reorganization of share capital that is beneficial to the corporation and all the stakeholders.

[45] The Court has held that architects of the business corporations model expressly contemplated reorganization in which an insolvent corporation would eliminate the interest of common shareholders. When the corporation is insolvent, the shareholders would receive nothing in liquidation. There is therefore nothing inherently unfair or unreasonable in a court effecting changes without shareholder approval. Rather, it would be unfair to the creditors and other stakeholders to permit the shareholders, who have no economic interest in the insolvent corporation and the lowest priority among stakeholders, to have any ability to block a reorganization: ***Re Canadian Airlines Corp***., 2000 ABQB 422 at paras 72 and 73.

[46] From a policy point of view, this result is commercially reasonable. It makes no sense that section 67 of the FAA would not preclude an RVO structure under the CCAA, but would have that result in a receivership. This would thwart the remedial effect of insolvency legislation with respect to this kind of receiverships with no benefit to the Crown as long as the tax credits and the Crown debt end up in the same entity, to the extent that this facilitates some kind of valid set- off.

III. Conclusion

[47] Therefore, I find the RVO structure, as amended with respect to the SR&ED credits, to be an appropriate structure in the exceptional circumstances of this insolvency, and I will grant the order.

[48] An issue arose during the hearing with respect to whether the Crown would have set off rights in this case in any event, but given the decision I have made, and the fact that under the Amended Subscription Agreement, the tax credits will follow debt into ResidualCo, it is not necessary that I address that issue.

IV. Postscript

[49] After the oral delivery of this decision, I was notified by the Crown that additional research had identified subsection 220(b) of the *Income Tax Act*, which reads as follows:

> (6) Notwithstanding section 67 of the *Financial Administration Act* and any other provision of a law of Canada or a province, a corporation may assign any amount payable to it under this Act

[50] This thus clarifies the issue of the assignment of tax debt and section 67of the FAA.

Dated at the City of Calgary, Alberta this 10th day of May 2023.

B.E. Romaine
J.C.K.B.A.

Appearances:

Ryan Zahara and Robert Law
for the Receiver, FTI Consulting Canada Inc.

Raymond Lee, Rana El-Ehoury and George F. Brody
for the Crown

Walker Welsh MacLeod and Erinn Wilson
for the Lender

1999 CarswellOnt 281
Ontario Court of Justice (General Division)

Congress Financial Corp. (Canada) v. American Sensors Electronics Inc.

1999 CarswellOnt 281, [1999] O.J. No. 382, 85 A.C.W.S. (3d) 814, 91 O.T.C. 77

Congress Financial Corporation (Canada), Applicant and American Sensors Electronics Inc., Respondent

Congress Financial Corporation (Canada), Applicant and American Sensors Inc., Respondent

Greer J.

Heard: January 25, 1999
Judgment: February 5, 1999
Docket: 98-CL-3225, 97-CL-000164, B228/97

Counsel: *Frank E. Walwyn*, for North American Detectors Inc., the Moving Party.
Craig J. Hill, for Spergel & Associates Inc., Court - appointed Receiver and manager of the Respondent.
Christopher H. Freeman, for Granaria Holdings B.V., a secured creditor of the Respondent.

Subject: Intellectual Property; Insolvency; Corporate and Commercial; Property; Civil Practice and Procedure

MOTION by purchaser under Receiving Order to compel Receiver to file Articles of Reorganization of corporation in receivership to change corporate name in compliance with court order.

***Greer J.*:**

1 The Moving Party on the Motion before me is North American Detectors Inc. ("NADI"), the purchaser of certain property of American Sensors Electronics Inc. ("ASEI") and American Sensors ("ASI") from Spergel & Associates Inc., as Court-appointed Receiver and Manager (the "Receiver"), pursuant to the terms of an offer dated September 3, 1997, which was approved by the Court. In his Order of that date, Mr. Justice Houlden approved the Agreement made by the Receiver which contained the following terms which are now in issue before me:

> 3. THIS COURT ORDERS THAT the Receiver is hereby authorized and empowered to execute and deliver the Agreement with such alterations, amendments, deletions and additions as the Purchaser shall require and the Receiver may in its discretion agree to and to perform its obligations as the vendor in the Agreement and to receive payment of the amounts payable under the Agreement and to take all steps and execute such other documents contemplated by the Agreement to effect the completion of the transactions contemplated therein, including the transfers, assignments and agreements to carry out the intent thereof, and to obtain all regulatory approvals and consents, and to follow up and require the completion of such other corporate matters, including, without limitation, the change of name provided for hereunder and all such transactions are hereby approved.
>
> 4. THIS COURT ORDERS THAT for the purposes of paragraph 3 hereof, the Receiver is hereby authorized to do, make and execute all acts, things and documents as may be required, and to execute such powers of attorney, conveyances, deeds, releases of claims against AESI and documents in the name of and on behalf of ASEI or any directly or indirectly owned subsidiary as may be contemplated by the Agreement, any such powers of attorney, conveyances, deeds, releases or documents so executed by ASEI and are hereby authorized and approved.

> 9. THIS COURT ORDERS THAT pursuant to section 247 and 248 of the Business Corporations Act, R.S.O. 1990, c.B.16, the articles and by-laws of ASEI shall be amended so as to change its name to a name dissimilar to ASEI and the directors, officers and agents of ASEI shall forthwith comply with subsection 186(4) of the said Business Corporations Act.

2 NADI is before the Court on two separate but similar Motions asking it enforce the Order of Mr. Justice Houlden by ordering the Receiver to sign Articles of Re-organization to change the names of ASEI and ASI to names dissimilar to their present names.

3 When NADI purchased assets of AESI, two of such assets were the two corporate names, AESI and ASI. In the List of Purchased Assets, which is attached as Schedule A to the Asset Purchase Agreement entered into by the Receiver with NADI, paragraph 3 (a) under "Other Assets" says that they include, inter alia, the following:

> ...and all intellectual property, patents, industrial designs and Listings (as hereinafter defined) related to the production of smoke detectors), including but not limited to, the "American Sensors" .... corporate names, trademarks, design marks, patents...

In addition, paragraph 11.6 of the Asset Purchase Consolidation Agreement defines "Future Assurances" as:

> The parties hereto shall sign such further and other papers, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full force and effect to this Agreement and every part thereof,...

4 It is the position of NADI that Articles of Re-organization have to be filed in order to effect the change as contemplated in the Agreement and that the Receiver must do this. S.171 (3) of the *Business Corporations Act*, states the following regarding a change of corporate name:

> (3) No corporation shall change its name if,
>
> (a) the corporation is unable to pay its liabilities as they become due; or
>
> (b) the realizable value of the corporation's assets is less than the aggregate of its liabilities.

It is the position of Granaria Holdings B.V. ("Granaria"), a secured creditor of AESI, and of its counsel, Mr. Freeman, who is a director of both AESI and ASI, that since ASI has not been declared insolvent, only when this occurs can NADI move to have the directors of that corporation change the name pursuant to the Agreement.

5 NADI relies on the principle set down in *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 O.R. (3d) 289 (Ont. C.A.) at p.298 that the effect of the appointment of a Receiver and manager under a general security agreement is to "...divest the companies and their boards of directors of their power to deal with the property comprised in the appointment." Further, at p.314, Doherty J.A., concurring with Finlayson, J.A. on this point, says:

> I agree with Finlayson J.A. that the placement of a receiver, either by operation of the terms of an agreement or by court order, effectively removes those formerly in control of the company from that position and vest that control in the receiver-manager...

He then goes on to quote Forsyth J. in *Alberta Treasury Branches v. Hat Development Ltd.* (1988), 64 Alta. L.R. (2d) 17, 71 C.B.R. (N.S.) 264 (Alta. Q.B.) at p.268 C.V.R. wherein it held:

> It is empowered by the court to manage the affairs of the company and it is completely inconsistent with that function to suggest that some residual power lies in the hands of the directors of the company to create further indebtedness of the company and thus interfere however slightly, with the receiver-manager's ability to manage.

These cases point out the problem in a receivership whereby the directors of the company attempt to either override the power of the receiver or take certain duties out of the receiver's hands. Under the terms of the Agreement where NADI purchased certain assets, the wording is clear that the Receiver is obligated to do just what NADI has been asking the Receiver to do, that is, sign the articles of Re-organization as requested.

6 The Order of Mr. Justice Houlden states that it is made pursuant to Section 247 and 248 of the *Business Corporations Act of Ontario*. Mr. Freeman argues that this was incorrect and that no oppressive conduct was being complained of. I do not see how, in retrospect, it matters that what may be a technical error not affecting the substance of the Motion, can now affect the relief being asked for by NADI. The Order speaks for itself, was approved by all parties involved in the sale and purchase, and was issued and entered by the Court. Mr. Freeman further attempted to go behind the Order by explaining the circumstances leading up to the tenders being submitted by prospective purchasers of the assets and the eventual signing of the Order by Mr. Justice Houlden. Again, in my view, this is not appropriately before the Court at this point. No one appealed the Order as it had been approved by all parties before it was signed by Mr. Justice Houlden. Mr. Freeman further complained that the Order did not say that it was for the benefit of NADI, pursuant to R.60.06(1) of the Rules of Civil Procedure. I am satisfied that the face of the Order makes it clear that it is for NADI's benefit, as NADI is the purchaser. This Rule does not oblige the drafter of the Order to put the specific words of the Rule in the Order. It simply states:

> An order that is made for the benefit of a person who is not a party may be enforced by that person in the same manner as if the person were a party.

In the case before me, NADI is asking that the Order of Mr. Justice Houlden, which was made for its benefit, be enforced.

7 The Receiver takes the position that it does not have the authority to execute the Articles of Amendment changing the ASEI name, as it is neither the agent of the security holder nor the agent of the debtor. Further, the Receiver says that as both companies AESI and ASI are in bankruptcy now, there is no authority under the *Bankruptcy and Insolvency Act* for the Receiver to do it. The Receiver says that it is the directors of the companies who are the appropriate persons to sign such Articles.

8 Frank Bennett, in his leading text on "Receiverships", Carswell Company Limited, Toronto, 1985, notes at p.50 thereof:

> The appointment of a receiver and manager, whether court or private, does not dissolve a debtor company but merely supersedes it and deprives the debtor of all its power to enter into contracts or dispose of the property. The powers of the officers and directors of the debtor are suspended with respect to the assets, notwithstanding that the management and control of the assets is transferred to the receiver.

It is clear in the transaction before me that the Receiver, using its power as described above, disposed of the property as described in the asset sale to NADI. It signed the Agreement and the Court Order approving the sale authorizes the Receiver in paragraph 3 to "...follow up and require the completion of such other corporate matters, including, without limitation, the change of name provided for hereunder and all such transactions are hereby approved." The Court, therefore, specifically authorizes the Receiver to do exactly what NADI is asking it to do.

9 I am satisfied that the principles as set out in *Elan*, supra, apply to the case at bar. Order to go that Spergel & Associates Inc., as Receiver of ASEI and ASI, execute the Articles of Re-organization in the form which is attached as Appendix A to NADI's Notice of Motion. If the parties cannot otherwise agree on Costs, I may be spoken to.

Motion granted.

End of Document

Français

The Corporations Act

ARTICLES OF REORGANIZATION

Manitoba

1. Name of corporation

   Genesus Inc.

In accordance with section 185, a reorganization has been approved by an order of the court, and the articles of the corporation are amended as follows:

By changing the name of the corporation to 10014640 Manitoba Inc.

Date	Signature	Office held

Instructions:
The articles of reorganization must set out the amendments to the articles of incorporation in accordance with the court order and the amendments must conform with and have continuity with the paragraph references of the existing articles. A certified copy of the court order must accompany the articles of reorganization together with any notices otherwise required to be filed to comply with the terms of the order.

Available in alternate formats, upon request

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