

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF THE *Canada Business Corporations Act*
R.S.C., 1985 c. C-44

AND

IN THE MATTER OF HYDROXYL SYSTEMS INC.

PETITIONER

NOTICE OF MOTION

TO: The Creditors and Parties who have Appeared in this Proceeding
AND TO: Aquapoint Inc.

TAKE NOTICE that an application will be made by the Petitioner to the Honourable Mr. Justice Hinkson, sitting in Chambers at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, at 2:00 p.m. on Thursday, July 30, 2009, or so soon thereafter as counsel may be heard, for an Order:

1. In the form attached hereto as Schedule "A".

AND TAKE NOTICE that in support of this application will be read the following:

1. Affidavit #9 of David Gray, sworn July 24, 2009; and
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2. The Seventh Report of the Monitor to be filed.

AND FURTHER TAKE NOTICE that this application is made pursuant to Section 11 of the *Companies' Creditors Arrangement Act* and the inherent jurisdiction of the Court.

This matter is not within the jurisdiction of a Master as Mr. Justice Hinkson is seized of the

matter.

It is anticipated that this matter will require approximately **2 hours** to be heard.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response,

- (a) deliver to the applicant
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

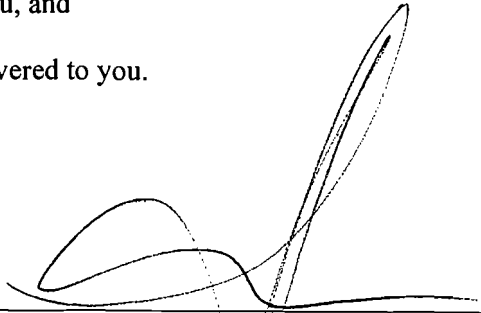
TIME FOR RESPONSE

If the application is for a final judgment under Rule 18A, the response must be delivered on or before the 11th day after the delivery to you of the notice of motion.

In all other cases, the response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and
- (b) the date on which the notice of motion was delivered to you.

Dated: July 24, 2009



SCOTT A. TURNER
Solicitor for the Petitioner

THIS NOTICE OF MOTION is delivered by Scott A. Turner of Burns, Fitzpatrick, Rogers & Schwartz LLP, Barristers & Solicitors, 1400 - 510 Burrard Street, Vancouver, BC V6C 3A8; Telephone: 604.685.0121; Facsimile: 604-685-2104; Email: sturner@bfrs.ca

SCHEDULE "A"

NO. S088488
VANCOUVER REGISTRY

IN SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. c-36, as amended

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*
R.S.C., 1985 c. C-44

AND

IN THE MATTER OF HYDROXYL SYSTEMS INC.

PETITIONER

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE) THURSDAY, THE 30TH DAY OF
MR. JUSTICE HINKSON) JULY, 2009

THE APPLICATION of the Petitioner coming on for hearing this day at Vancouver, British Columbia; AND UPON READING the Fifth Report of the Monitor and all other pleadings and materials filed herein; AND UPON HEARING Scott A. Turner, counsel for the Petitioner, and those other counsel listed in Schedule "A" attached hereto, AND ON NOTICE to those parties having filed and served appearances to the Petitioners; AND PURSUANT to the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s. 2 as amended, the *Business Corporations Act*, S.B.C. 2002, c. 57, Rules 3 and 44 of the British Columbia Rules of Court and the inherent jurisdiction of this Honourable Court;

Approval of Sale Agreement

1. THIS COURT ORDERS that the agreement of purchase and sale between the Petitioner and Headworks Inc. (the "Purchaser") made as of July 22, 2009 and attached hereto as Schedule

“A” (the “Sale Agreement”) is approved and the Petitioner is authorized, empowered and directed to complete the transactions contemplated in the Sale Agreement (the “Transactions”) in accordance with the terms and conditions of the Sale Agreement with such alterations, amendments, deletions and additions of a non-material nature as the Petitioner and the Purchaser may agree.

2. THIS COURT ORDERS that in completing the Transactions, subject to the terms and conditions of the Sale Agreement, the Petitioner is authorized, empowered and directed:

- (a) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transactions as may be necessary or advisable to conclude the Transactions, including the execution of such powers of attorney, conveyances, deeds, releases, bills of sale, transfers, instruments and such other documents in the name and on behalf of the Petitioner as may be contemplated by the Sale Agreement; and
- (b) to take such steps, actions and proceedings as are necessary or incidental to the performance of the Petitioner’s obligations pursuant to the Sale Agreement.

3. THIS COURT ORDERS that any requirements for notice pursuant to the *Personal Property Security Act (British Columbia)*, R.S.B.C. 1996, Chapter 359, as amended (the “PPSA”) are not required in respect of the Transactions and are hereby dispensed with.

Vesting of Purchased Assets

4. THIS COURT ORDERS AND DECLARES that upon payment of the sum of \$90,000 to Alterninvest II Fund L.P. and \$33,400.00 to the Royal Bank of Canada, all of the Petitioners’ right, title, benefit and interest in and to the Property as defined in the Sale Agreement shall be ~~vested absolutely in the Purchaser free and clear of and from any and all ownership claims, title retention claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise~~

(collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order of Mr. Justice Hinkson in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the PPSA or any other personal property registry system or Canadian patent registration ("Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

5. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Petitioner and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Petitioner;

the vesting of the Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

Termination of Licence Agreements

6. THIS COURT ORDERS THAT that certain Licence and Distribution Agreement by and between the Petitioner and Infilco Degremont, Inc ("IDI"), dated as of August 3, 2005, be, and the same hereby is, terminated, without prejudice to the right of IDI to claim damages against the Petitioner for such termination.

7. THIS COURT ORDERS THAT that certain Licence and Product Supply Agreement by and between the Petitioner and Aquapoint, Inc. ("Aquapoint"), dated as of August 26, 2005, be,

and the same hereby is, terminated, without prejudice to the right of Aquapoint to claim damages against the Petitioner for such termination.

Miscellaneous

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Petitioner and the Purchaser and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Petitioner and the Purchaser, as may be necessary or desirable to give effect to this Order or to assist the Petitioner and the Purchaser and their agents in carrying out the terms of this Order.

9. That the endorsement of the form of this Order by counsel other than counsel for the Petitioner be dispensed with.

BY THE COURT

DISTRICT REGISTRAR

Approved as to form:

SCOTT A. TURNER
Counsel for the Petitioner

SCHEDULE "A"