

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial division)

N°: 500-11-036133-094

Sitting as the "Court" as designated pursuant
to the Companies' Creditors *Arrangement Act*,
Canada, (R.S.C., C-36 as Amended)

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

ABITIBIBOWATER INC.

and

ABITIBI CONSOLIDATED INC.

and

BOWATER CANADIAN HOLDINGS INC.

and

The other "PETITIONERS" listed on
Schedules "A", "B" and "C" of the "Amended
Initial Order" issued by the Court herein on
April 22, 2009

Respondents

vs.

E.S. FOX LIMITED, a corporation subsisting
under the provisions of the Ontario Business
Corporations Act, having its registered office
at 9127 Montrose Road, in the City of Niagara
Falls, Province of Ontario, L2E 6S5

Petitioner

and

ERNST & YOUNG INC., in its capacity as
Monitor as appointed pursuant to the Initial
Order

Mise-en-cause

MOTION TO TEMPORARILY LIFT THE STAY OF PROCEEDINGS

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF IN MONTREAL, THE
PETITIONER E.S. FOX LIMITED, RESPECTFULLY SUBMIT THE FOLLOWING:**

INTRODUCTION

1. The Petitioner E.S. Fox Limited ("**Fox**") hereby requests that the stay of proceedings provided in the Initial Order issued by the Honourable Justice Clément Gascon, J.S.C. on April 17, 2009, as amended, in favour of AbitibiBowater Inc., Abitibi Consolidated Inc., Bowater Canadian Holdings Inc. and the other Petitioners listed on Scheduled "A", "B" and "C" ("**Respondents**") be temporarily lifted for the sole purpose to allow Fox to register claims for liens pursuant to the *Ontario Construction Lien Act* ("**OCLA**"), R.S.O. 1990, c C-30 against property owned by Abitibi Consolidated Inc., as more fully described hereafter;
2. Fox is a corporation engaged in construction as well as in the supplying and fabrication of industrial materials;

THE STAY

3. An Initial Order in favour of the Respondents under the *Companies Creditors Arrangement Act*, R.S.C. 1985, C-36 ("**CCAA**") was granted on April 17, 2009, as appears from the Court record herein;
4. The Initial Order, which was subsequently amended on April 22, 2009, includes, *inter alia*, of a stay of proceedings in favour of the Respondents that read as follow:

*"10. **ORDERS** that, until and including May14, 2009, or such later date as the Court may order (the "**Stay Termination Date**", the period from the date of this Order to the Stay Termination Date being referred to as the "**Stay Period**"), no right, legal or conventional, may be exercised and no proceedings, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "**Proceedings**") may commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "**Persons**" and, individually, a "**Person**") against or in respect of the Petitioners, the 18.6 Petitioners and the entities listed on Schedule "D" hereto (the "**Partnerships**") or any of the present or future property, assets, rights and undertakings of the Petitioners, the 18.6 Petitioners or the Partnerships, of any nature and in any location, whether held directly or indirectly by the Petitioners, the 18.6 Petitioners or the Partnerships, in any capacity whatsoever, or held by others for the Petitioners, the 18.6 Petitioners or the Partnerships (collectively, the "**Property**"), and all Proceedings already commenced against the Petitioners, the 18.6 Petitioners, the Partnerships or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA."*

5. On May 14th, 2009, the Stay Period was extend until September 4th, 2009, as appears from the Court record herein;

THE FACTS

6. From January 3rd, 2008, up to and including April 17th, 2009, Fox provided piping, mechanical and electrical work for Abitibi Consolidated Inc., and more precisely, for its Mill situated in Thorold, Ontario;
7. Moreover, Fox executed contract work for Abitibi Consolidated Inc. again for the Thorold Mill where the final contract value, after all change orders, was worth \$31,441.00 more than the initial contract value;
8. Fox has not received payment for labour and material provided and incurred during the works mentioned in the above-mentioned paragraphs;
9. Therefore, as of April 17, 2009, an outstanding balance of \$107,900.00 remains unpaid, the whole as more fully appears from a copy of outstanding statement, purchase and change orders, invoices disclosed as **EXHIBIT ES-1**;

LIFTING THE STAY

10. In order to preserve all remedies and rights available to Fox under the OCLA, Petitioner hereby requests that this Honourable Court temporarily lifts the Stay of Proceedings in favour of the Respondents for the sole purpose of allowing Fox to register its construction liens;
11. Abitibi Consolidated Inc.'s properties affected by the claims for liens and the extent of said liens, are more fully described in registration forms produced herewith as **EXHIBIT ES-2**;
12. The right of Fox's liens arose before the Initial Order as all services and materials in support of the claims were supplied before April 17, 2009;
13. Fox is therefore a *de facto* lien claimant and is entitled to request a temporarily lift in order to preserve all his rights under the OCLA by the registration of both claims for liens in the proper land registry office on the title of the premises;
14. Fox would suffer grave prejudice if the present Motion was not granted since it would be in a position to be treated differently than all other creditors with construction lien rights;
15. The present Motion is well founded both in facts and in law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion;

LIFT the Stay of Proceedings provided for in the Initial Order issued in favour of Abitibibowater Inc., Abitibiconsolidated Inc., Bowater Canadian Holdings Inc. and the other Petitioner listed on Schedules "A", "B" and "C" issued by the Court on April 17, 2009 by the Honourable Justice Clément Gascon, J.C.S. as amended, and as extended on May 14, 2009, until September 4, 2009, for the sole purpose of allowing E.S. Fox Limited to register the claims for liens produced as ES-2 in the proper land registry office;

THE WHOLE without costs.

MONTREAL, June 5, 2009

A handwritten signature in dark ink, reading "Lapointe Rosenstein", is written over a horizontal line.

LAPOINTE ROSENSTEIN, L.L.P.

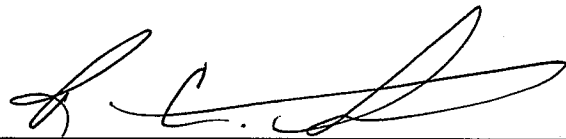
Attorneys for the Petitioner

E.S. Fox Limited

AFFIDAVIT

I, the undersigned, **ROB ARSENAULT**, Certified management accountant practising at 9127 Montrose Rd., in the city and judicial district of Niagara Falls, Ontario, having been duly sworn, do depose and say:

1. I am a duly authorized representative for the Petitioner E.S. Fox Limited;
2. All the facts alleged in the present Motion are true.



ROB ARSENAULT

Solemnly declared before me,
in Niagara Falls, this 5th Day of May June
2009



Commissioner of Oaths

Nick Lanese, a Commissioner, etc.,
Regional Municipality of Niagara, for
E.S. Fox Limited and its associated and
affiliated companies.
Expires May 11, 2011.

NOTICE OF PRESENTATION

TO: Distribution list

TAKE NOTICE that the Motion to Temporarily Lift the Stay of Proceedings will be presented for adjudication before this Honourable Court, on **June 26, 2009**, at 9:00 a.m. or so soon thereafter as Counsel may be heard, in **room 16.10**, at the courthouse of Montreal, located at 1 Notre-Dame Street East.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 5, 2009



LAPOINTE ROSENSTEIN L.L.P.

Attorneys for Petitioner

E.S. Fox Limited

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial division)

N°: 500-11-036133-094

Sitting as the "Court" as designated pursuant
to the Companies' Creditors *Arrangement Act*,
Canada, (R.S.C., C-36 as Amended)

**IN THE MATTER OF THE PLAN OF
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Schedules "A", "B" and "C" of the "Amended
Initial Order" issued by the Court herein on
April 22, 2009

Respondents

vs.

E.S. FOX LIMITED, a corporation subsisting
under the provisions of the Canada Business
Corporations Act, having its registered office
at 9127 Montrose Road, in the City of Niagara
Falls, Province of Ontario, L2E 6S5

Petitioner

and

ERNST & YOUNG INC., in its capacity as
Monitor as appointed pursuant to the Initial
Order

Mise-en-cause

LIST OF EXHIBITS

- EXHIBIT ES-1** Outstanding statement, purchase, change orders, invoices (*en liasse*);
- EXHIBIT ES-2** Construction liens registration forms.

MONTREAL, June 5, 2009



LAPOINTE ROSENSTEIN, L.L.P.

Attorneys for the Petitioner
E.S. Fox Limited

EXHIBIT ES-2

ACKNOWLEDGMENT AND DIRECTION

TO: Macleod Dixon LLP

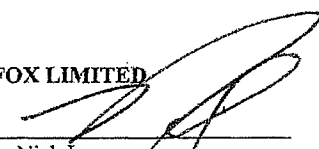
RE: E.S. FOX (the "Petitioner") vs. AbitibiBowater Inc., Abitibi Consolidated Inc.,
and Bowater Canadian Holdings Inc. (collectively, the "Respondents")
Construction lien on Allanburg Road, Thorold, ON (the "Property")

This will confirm that:

1. The undersigned has reviewed the information set out in the attached "In Preparation" document(s) (the "Document(s)") and that this information is accurate;
2. You, your authorized agent or your employee, are authorized and directed to register the Document(s) electronically on behalf of the undersigned and to make any minor amendments thereto prior to registration;
3. Prior to registration, you are authorized and directed to insert in the Document(s) the name(s) and title(s) of the person(s) who is/are executing this Acknowledgement and Direction as the person(s) who has/have authority to bind the undersigned;
4. The nature and effect of the Document(s) have been fully explained to the undersigned, and the undersigned understands that it is a party to and bound by the terms and provisions of the Document(s) to the same extent as if the undersigned had signed the Document(s);
5. The undersigned is in fact a party named in the Document(s) and has not misrepresented its identity to you; and
6. The execution of this Acknowledgment and Direction may be communicated by way of facsimile transmission, and receipt of such transmission by the addressee(s) herein shall be deemed to be as good, sufficient and fully effectual as if an original executed copy of the Acknowledgment and Direction had been delivered.

Dated this 29th day of May, 2009.

E.S. FOX LIMITED

Per: 

Name: Nick Lanese

Title: ~~Certified General Accountant~~
Controller

I have authority to bind the Corporation

Attached: "In Preparation" Document Report(s) with respect to: Construction Lien

Properties

PIN 64055 - 0545 LT

Description PART OF TOWNSHIP LOTS 27, 28, 29, 45, 46 & 47 THOROLD AND RDAL BTN TWP LOTS 28 & 46 THOROLD, PART OF RDAL BTN LOTS 27 & 45 THOROLD, PART OF RDAL BTN LOTS 29 & 47 THOROLD, PART OF RDAL BTN LOTS 28 & 29 THOROLD, PART OF RDAL BTN LOTS 46 & 47 THOROLD, CLOSED BY BYLAWS DB877, TH1145, TH6974, RO277029 AND UNREGISTERED BYLAW 173 DESIGNATED AS PARTS 1 & 5 ON PLAN 59R2381 & PART 1 ON PLAN 59R3181 EXCEPT PT 1, 30R12060; THORO LD; S/T RO406819 & RO775609; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PART 2 PLAN 30R12081 AS IN SN172696; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 1, 2, 3 & 4 PLAN 30R12080 AS IN SN172697; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 3, 4, 7 & 8 PLAN 30R12080 AS IN SN172698; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 2, 3, 10 & 11 PLAN 30R12080 AS IN SN172699; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 3, 11, 12, 13, 14, 15 & 16 PLAN 30R12080 AND PARTS 2 & 3 PLAN 30R12083 AS IN SN172718; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 3, 11, 12, 13, 14, 15 & 16 PLAN 30R12080 AND PARTS 1 & 3 PLAN 30R12083 AS IN SN172719; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER PARTS 13, 14 & 15 PLAN 30R12080 AS IN SN172720; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN SN170100 OVER PARTS 2, 3, 4, 5, 6, 7 & 9 PLAN 30R12080 AS IN SN172839; S/T AN EASEMENT IN FAVOUR OF THE LEASEHOLD INTEREST IN LEASE SN170100 OVER THE WHOLE PIN AS IN SN172858; S/T EASE OVER PTS 1 & 5, 59R2381 & PT 1, 59R3181 EXCEPT PT 1, 30R12060 IN FAVOUR OF PT TWP LT 47 THOROLD, PT 1, 59R12060 AS IN SN181495.

Address THOROLD

PIN 64055 - 0547 LT

Description PT TWP LT 47 THOROLD PART 1 30R12060; THOROLD

Address THOROLD

Consideration

Consideration \$ 107,900.00

Claimant(s)Name E.S. FOX LIMITED
Acting as a companyAddress for Service 9127 Montrose Road
Niagara Falls, Ontario
L2E 6S5

I am the lien claimant and the facts stated in the claim for lien are true.

I, Nick Lanese, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner 1508756 Ontario Inc., 115 Metcalfe Street, Suite 800, Montreal, Quebec, H3B 5H2 Name and address of person to whom lien claimant supplied services or materials Abitibi-Bowater Inc., Abitibi-Consolidated Company of Canada, and Abitibi-Consolidated Inc., Allanburg Road, Thorold, Ontario Time within which services or materials were supplied from 2008/01/03 to 2009/04/17 Short description of services or materials that have been supplied labour and material required to perform piping, mechanical and electrical work Contract price or subcontract price \$373,795.00 Amount claimed as owing in respect of services or materials that have been supplied \$107,900.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Shannon Noelle Davidson

100 Wellington Street West, Suite
500, PO Box 128
Toronto
M5K 1H1

acting for
Applicant(s)

Signed

2009 05 29

Tel 4163608511

Fax 4163608277

I have the authority to sign and register the document on behalf of the Applicant(s).

N°: 500-11-036133-094
SUPERIOR COURT (Commercial division) District of Montreal
IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF: ABITIBOWATER INC. and ABITIBI CONSOLIDATED INC. and BOWATER CANADIAN HOLDINGS INC. and The other "PETITIONERS" listed on Schedules "A", "B" and "C" of the "Amended Initial Order" Respondents vs. E.S. FOX LIMITED Petitioner and ERNST & YOUNG INC. Mise-en-cause
EXHIBIT ES-2
Our file n°: EFOX.56554 Refer to Me Éric Potvin
LAPOINTE ROSENSTEIN LLP Attorneys Suite 1400, 1250 René-Lévesque Blvd. West Montreal, Quebec H3B 5E9 Telephone: (514) 925-6371 Facsimile: (514) 925-9001

N°: 500-11-036133-094

SUPERIOR COURT
(Commercial division)
District of Montreal

**IN THE MATTER OF THE PLAN OF
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**MOTION TO TEMPORARILY LIFT THE STAY
OF PROCEEDINGS
AFFIDAVIT OF MR. ROB ARSENAULT
NOTICE OF PRESENTATION
LIST OF EXHIBITS
EXHIBIT ES-2**

ORIGINAL

Our file n°: EFOX.56554
Refer to Me Éric Potvin

LAPOINTE ROSENSTEIN, L.L.P.
Attorneys

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Montreal, Québec H3B 5E9
Telephone: (514) 925-6371
Facsimile: (514) 925-9001

BL0300