

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC

NO : 500-11-036133-094

S U P E R I O R C O U R T
(C o m m e r c i a l C h a m b e r)

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

and

**BOWATER CANADIAN HOLDINGS INC. and
Others**

Petitioners

and

ERNST & YOUNG INC.

Monitor

c.

**SOCIÉTÉ EN COMMANDITE BORALEX
ÉNERGIE**, a limited partnership constituted pursuant
to the provisions of the Civil Code of Quebec, having
its principal place of business at 36, Lajeunesse Street,
Kinsey Falls, Province of Quebec, J0A 1B0

Respondent

**MOTION DE BENE ESSE TO OBTAIN CONFIRMATION THAT BCFPI, ACI
AND ACCC ARE AUTHORIZED TO RESILIATE CERTAIN CONTRACTS
(Section 11 of the Companies' Creditors Arrangement Act and paragraph 46(f) of
the Initial Order)**

TO THE HONORABLE JUSTICE CLÉMENT GASCON, SITTING IN
COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. By way of the present Motion, the Petitioners, Bowater Canadian Forest Products Inc. (hereinafter “**BCFPI**”), Abitibi-Consolidated Inc. (hereinafter “**ACI**”) and Abitibi-Consolidated Company of Canada (hereinafter “**ACCC**”) are asking the Court, *de bene esse*, to confirm the superiority of the Initial Order (as defined hereinafter) over certain injunction orders issued before the beginning of the proceedings pursuant to the *Companies' Creditors Arrangement Act* (“hereinafter “**CCAA**”).

II THE RELEVANT CONTRACTS

2. During the years 1996 and 1997, Enviro-Énergie Alliance Inc. (hereinafter “**Enviro**”), in the course of the operations of its cogeneration power plant (hereinafter the “**Plant**”) situated in Dolbeau, Lac St-Jean, concluded the following five supply contracts:
 - a) *Contract for the Sale of Wood Residues* between Enviro and Corporation Stone-Consolidated (hereinafter “**Stone**”) dated April 22, 1996, for a term of 25 years for the sale of 50,000 tons of dry bark per year at a current price of \$10 per ton (while the marked price is at \$20 per ton) (hereinafter the “**Bark Supply Contract 1**”), the whole as it appears in a copy of the Bark Supply Contract 1, communicated herewith as **Exhibit R-1**;
 - b) *Contract for the Sale of Wood Residues* between Enviro and Scierie C.F.G. Inc. (hereinafter “**CFG**”) dated September 12, 1996, for a term of 25 years for the sale of 5,700 tons of dry bark per year at a current price of \$10 per ton (while the marked price is at \$20 per ton) (hereinafter the “**Bark Supply Contract 2**”), the whole as it appears in a copy of the Bark Supply Contract 2, communicated herewith as **Exhibit R-2**;
 - c) *Contract for the Sale of Wood Residues* between Enviro and PFA (Mistassini Division) dated August 26, 1997, for a term of 25 years for the sale of 65,000 tons of dry bark per year at a current price of \$10 per ton (while the marked price is at \$20 per ton) (hereinafter the “**Bark Supply Contract 3**”), the whole as it appears in a copy of the Bark Supply Contract 3, communicated herewith as **Exhibit R-3**;
 - d) *Contract for the Sale of Wood Residues* between Enviro and PFA (St-Félicien Division) dated August 26, 1997, for a term of 25 years for the sale of 45,000 tons of dry bark per year at a current price of \$10 per ton (while the marked price is at \$20 per ton) (hereinafter the “**Bark Supply Contract 4**”), the whole as it appears in a copy of the Bark Supply Contract 4, communicated herewith as **Exhibit R-4**;
 - e) *Contract for the Sale of Wood Residues* between Enviro and Produits Forestiers Donohue Inc. (hereinafter “**Donohue**”) dated December 16, 1997,

for a term of 20 years for the sale of 30,000 tons of dry bark per year at a current price of \$10 per ton (while the marked price is at \$20 per ton) (hereinafter the “**Bark Supply Contract 5**”), the whole as it appears in a copy of the Bark Supply Contract 5, communicated herewith as **Exhibit R-5**.

3. The Plant is adjacent to BCFPI’s paper factory located in Dolbeau which, at the time, belonged to Produits Forestiers Alliances inc. (“**PFA**”).
4. Boralex Dolbeau Inc. (hereinafter “**Boralex**”) acquired Enviro during the course of the year 1999.
5. During the course of the year 1999, the following contracts were entered into:
 - a) a *Contract for Services for the Operation and Maintenance of a Cogeneration Power Plant* (hereinafter the “**Service Contract**”) was entered into on January 28, 1999 between PFA and Boralex, pursuant to which Boralex entrusted to PFA, for the duration of a 24-year term, the duty to operate and assure the maintenance of the Plant, the whole as it appears in a copy of the Service Contract, communicated herewith as **Exhibit R-6**.
 - b) a *Contract for the Sale of Steam* (hereinafter the “**Steam Contract**”) was entered into on January 28, 1999 between Boralex and PFA, pursuant to which PFA committed, for the duration of a 24-year term, to buy a minimum quantity of steam per year, the whole as it appears in a copy of the Steam Contract, communicated herewith as **Exhibit R-7**.

III THE SUCCESSORS OF THE PARTIES TO THE VARIOUS CONTRACTS

i) BCFPI, ACI and ACCC

6. Following various corporate transactions that have occurred since 1998:
 - a) ACCC is the successor of Stone pursuant to the terms of the Bark Supply Contract 1, of CFG pursuant to the terms of the Bark Supply Contract 2 and of Donohue pursuant to the terms of the Bark Supply Contract 3.
 - b) BCFPI is the successor of PFA pursuant to the terms of the Service Contract, the Steam Contract, the Bark Supply Contract 3, and the Bark Supply Contract 4.

ii) Boralex

7. Following various corporate transactions that have occurred since 1999, SEC Boralex is the successor of Boralex pursuant to the terms of the Service Contract, the Steam Contract, the Bark Supply Contract 1, the Bark Supply Contract 2, the

Bark Supply Contract 3, the Bark Supply Contract 4 and the Bark Supply Contract 5.

IV THE INTERLOCUTORY INJUNCTION ORDER

8. On July 3, 2007, BCFPI transmitted a notice of default (hereinafter the “**Notice of Default**”) to SEC Boralex, placing the latter on notice to fully and appropriately execute its obligations under the Service Contract and to pay the sum of \$8,272,609, failing which BCFPI would transmit a notice to resiliate the Service Contract.
9. On August 1, 2007, SEC Boralex served a notice to BCFPI indicating its intention to submit to arbitration the disagreement regarding questions and claims raised in the Notice of Default.
10. On August 1, 2007, BCFPI transmitted to SEC Boralex a notice to resiliate the Service Contract for cause or to resiliate same pursuant to article 2126 of the *Civil Code of Québec* (hereinafter the “**Notice of Resiliation**”).
11. On August 21, 2007, SEC Boralex filed a Motion for an interlocutory and permanent injunction in order to obtain provisional measures (hereinafter the “**Motion for Injunction**”).
12. The Honorable judge Robert Dufresne heard the Motion for Injunction and, on January 22, 2008, issued an Order for an interlocutory injunction preventing BCFPI from acting in any manner that would give effect to the Notice of Resiliation, ordering the maintenance of the contractual *status quo* and ordering BCFPI to respect and satisfy all of its obligations under the Service Contract, and this, up until the final and executory decision of the arbitration tribunal (hereinafter the “**Justice Dufresne Order**”), the whole as appears from a copy of the Justice Dufresne Order, communicated herewith as **Exhibit R-8**.
13. On May 14, 2008, SEC Boralex sent an amended *de bene esse* notice of arbitration, stipulating that the dispute referred to in the Notice of Resiliation would also be submitted to arbitration (hereinafter the “**Notice of Arbitration**”).
14. On August 22, 2008, the arbitration tribunal made an award declaring that it was competent to hear the question regarding the resiliation of the Service Contract (hereinafter the “**Arbitral Award**”).
15. On September 15, 2008, BCFPI filed a Motion for judicial review in contestation of the Arbitral award, which was subsequently withdrawn, the whole as it appears in the Court record.
16. As of this day, the arbitration tribunal has not yet rendered a final decision regarding the question of the resiliation of the Service Contract.

17. On October 8, 2008, the Court of Appeal confirmed the Justice Dufresne Order, but specified that it was only an interlocutory order since it would be effective only until a final decision regarding the question of the resiliation of the Service Contract would be rendered by the arbitration tribunal constituted pursuant to the Notice of Arbitration (hereinafter the “**Court of Appeal Order**”), the whole as it appears in a copy of the Court of Appeal Order, communicated herewith as **Exhibit R-9**.

V. THE INITIAL ORDER

18. On April 17, 2009, the Honorable Judge Clément Gascon made an Initial Order pursuant to the CCAA in favor of, inter alia, BCFPI, ACI and ACCC (hereinafter the “**Initial Order**”), the whole as it appears in the Court record.
19. Pursuant to paragraph 47(f) of the Initial Order, BCFPI, ACI and ACCC have the right to resiliate contracts to which they are a party if they so deem it appropriate, subject to the consent of the Controller or to any order of this Court.
20. BCFPI, ACI and ACCC wish to resiliate the Service Contract, the team Contract, the Bark Supply Contract 1, the Bark Supply Contract 2, the Bark Supply Contract 3, the Bark Supply Contract 4 and the Bark Supply Contract 5, as these contracts are clearly unfavorable economically.
21. Accordingly, BCFPI, ACI and ACCC have sent to SEC Boralex a notice of resiliation of the Service Contract, the Steam Contract, the Bark Supply Contract 1, the Bark Supply Contract 2, the Bark Supply Contract 3, the Bark Supply Contract 4 and the Bark Supply Contract 5, dated July 7, 2008 and effective as of July 13, 2009 (hereinafter the “**Notice of Resiliation Pursuant to the Initial Order**”), as it appears in the copy of the Notice of Resiliation Pursuant to the Initial Order, communicated herewith as **Exhibit R-10**.
22. BCFPI, ACI and ACCC wish to obtain confirmation from this Court that the Initial Order allows them to resiliate the Service Contract, the Steam Contract, the Bark Supply Contract 1, the Bark Supply Contract 2, the Bark Supply Contract 3, the Bark Supply Contract 4 and the Bark Supply Contract 5, and this, despite the Justice Dufresne Order and the Court of Appeal Order.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

CONFIRM that the Initial Order dated April 17, 2009 (as amended) authorizes the Petitioners, Bowater Canadian Forest Products Inc., Abitibi-Consolidated Inc. and Abitibi-Consolidated Company of Canada, to resiliate the Service Contract (**R-6**), the Steam Contract (**R-7**), the Bark Supply Contract 1 (**R-1**), the Bark Supply Contract 2 (**R-2**), the Bark Supply Contract 3 (**R-3**), the Bark Supply Contract 4 (**R-4**) and the Bark Supply Contract 5 (**R-5**), and this, despite the Injunction Order issued on January 22, 2008 by the Honorable Judge Robert

Dufresne in the Court file # 155-05-000014-077, and the decision of the Court of Appeal rendered on October 8, 2008 in the Court file # 200-09-006241-084.

THE WHOLE without costs, unless contested.

MONTREAL, July 8, 2009

(s) STIKEMAN ELLIOT LLP

STIKEMAN ELLIOTT LLP

Attorneys for the Petitioners

SCHEDULE "A"
ABITIBI PETITIONERS

1. Abitibi-Consolidated Inc.
2. Abitibi-Consolidated Company of Canada
3. 3224112 Nova Scotia Limited
4. Marketing Donohue Inc.
5. Abitibi-Consolidated Canadian Office Products Holdings Inc.
6. 3834328 Canada Inc.
7. 6169678 Canada Inc.
8. 4042140 Canada Inc.
9. Donohue Recycling Inc.
10. 1508756 Ontario Inc.
11. 3217925 Nova Scotia Company
12. La Tuque Forest Products Inc.
13. Abitibi-Consolidated Nova Scotia Incorporated
14. Saguenay Forest Products Inc.
15. Terra Nova Explorations Ltd.
16. The Jonquière Pulp Company
17. The International Bridge and Terminal Company
18. Scramble Mining Ltd.
19. 9150-3383 Québec Inc.

SCHEDULE "B"
BOWATER PETITIONERS

1. Bowater Canadian Holdings Inc.
2. Bowater Canada Finance Corporation
3. Bowater Canadian Limited
4. 3231378 Nova Scotia Company
5. AbitibiBowater Canada Inc.
6. Bowater Canada Treasury Corporation
7. Bowater Canadian Forest Products Inc.
8. Bowater Shelburne Corporation
9. Bowater LaHave Corporation
10. St-Maurice River Drive Company Limited
11. Bowater Treated Wood Inc.
12. Canoxel Hardboard Inc.
13. 9068-9050 Québec Inc.
14. Alliance Forest Products (2001) Inc.
15. Bowater Belledune Sawmill Inc.
16. Bowater Maritimes Inc.
17. Bowater Mitis Inc.
18. Bowater Guérette Inc.
19. Bowater Couturier Inc.

SCHEDULE "C"
18.6 CCAA Petitioners

1. AbitibiBowater Inc.
2. AbitibiBowater US Holding 1 Corp.
3. Bowater Ventures Inc.
4. Bowater Incorporated
5. Bowater Nuway Inc.
6. Bowater Nuway Mid-States Inc.
7. Catawba Property Holdings LLC
8. Bowater Finance Company Inc.
9. Bowater South American Holdings Incorporated
10. Bowater America Inc.
11. Lake Superior Forest Products Inc.
12. Bowater Newsprint South LLC
13. Bowater Newsprint South Operations LLC
14. Bowater Finance II, LLC
15. Bowater Alabama LLC
16. Coosa Pines Golf Club Holdings LLC

AFFIDAVIT

I, the undersigned, Claude St-Laurent, Lawyer, having my principal place of business at Suite 800, 1155 Metcalfe Street Montréal, Québec, H3B 5H2, solemnly declare the following:

1. I am a Senior legal counsel of AbitibiBowater inc. and as such, I am informed of the facts surrounding the present case.
2. All the facts alleged in the *Motion De Bene Esse* to obtain confirmation that BCFPI, ACI and ACCC are authorized to resiliate certain contracts, and in the present affidavit, are true to my personal knowledge.

AND I HAVE SIGNED

(s) *CLAUDE ST-LARENT*

CLAUDE ST-LAURENT

Solemnly declared before me at Montréal,
on the 8th day of July, 2009

Commissioner for oaths

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion De Bene Esse* to obtain confirmation that BCFPI, ACI and ACCC are authorized to resiliate certain contracts will be presented before the Honourable Judge Clément Gascon on a date to be determined by the Court, at a time and in a Room to be announced.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, July 8, 2009

(s) *STIKEMAN ELLIOTT LLP*

STIKEMAN ELLIOTT LLP
Attorneys for Petitioners