

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

Nº: 500-11-036133-094

SUPERIOR COURT
(Commercial Division)

*Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act
R.S.C., 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 of the
"Amended Initial Order" issued by the Court
herein on April 17, 2009

Respondents

vs.

T. HARRIS ENVIRONMENTAL

MANAGEMENT INC., a corporation subsisting
under the provisions of the Ontario Business
Corporations Act, having its registered office
at 93 Skyway Avenue, Suite 101, in the City of
Toronto, Province of Ontario, M9W 6N6;
ALUMA SYSTEMS INC., a corporation
subsisting under the provisions of the Ontario
Business Corporations Act, having its



**LAPOINTE ROSENSTEIN
MARCHAND MELANÇON**
L.L.P. Attorneys

registered office at 10180 – 101 Street, Suite 260, in the City of Edmonton, Province of Alberta, T5J 3Y2; and **LAURENTIAN INSULATIONS 1982 LIMITED**, a corporation subsisting under the provisions of the Ontario Business Corporations Act, having its registered office at 21 Regional Road 84, P.O. Box 310, Capreol, Ontario, P0M 1H0

Petitioners

-and-

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

Mise-en-cause

MOTION TO LIFT TEMPORARILY THE STAY OF PROCEEDINGS

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS T. HARRIS MANAGEMENT INC., ALUMA SYSTEMS INC., AND LAURENTIAN INSULATIONS 1982 LIMITED, RESPECTFULLY SUBMIT THE FOLLOWING:

INTRODUCTION

1. The Petitioners, T. Harris Environmental Management Inc. ("**T. Harris**"), Aluma Systems Inc. ("**Aluma**"), and Laurentian Insulations 1982 Limited ("**Laurentian**"), hereby request:
 - a. A declaration that the registration of the claims for lien by T. Harris, Aluma and Laurentian pursuant to the Ontario *Construction Lien Act*, R.S.O. 1990, c. C-30 ("**CLA**") against property owned by the Respondents, as more fully described hereafter, are valid.
 - b. An order validating and authorizing:



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L.L.P. Attorneys

1. The registration of the claims for lien of T. Harris, Aluma, and Laurentian during the Stay Period.
 2. The issuance and registration of the Certificates of Action corresponding to the aforementioned claims for lien during the Stay Period.
 3. The issuance and service of the Statements of Claim corresponding to the aforementioned liens during the Stay Period.
2. In the alternative, the Petitioners hereby request an order *nunc pro tunc* that the Stay of Proceedings provided in the Initial Order issued by The Honourable Mr. 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 Schedules "A", "B" and "C" ("**Respondents**") be temporarily lifted for the sole purpose of:
- a. Permitting T. Harris, Aluma, and Laurentian to register claims for lien pursuant to the CLA, against property owned by Bowater Canadian Forest Products Inc./Bowater Produits Du Canada Inc., AbitibiBowater Canada Inc., Abitibi-Consolidated Inc., and Abitibi-Price Inc., as more fully described hereafter, in order to preserve their lien claims pursuant to the CLA.
 - b. Permitting T. Harris, Aluma, and Laurentian to issue and register Certificates of Action in order to perfect the aforementioned lien claims.
 - c. Permitting T. Harris, Aluma, and Laurentian to commence actions and to issue and serve the Statements of Claim relating to the aforementioned lien claims in order to comply with the provisions of the CLA.
3. T. Harris is a corporation carrying on business as an environmental consultant.
 4. Aluma is a corporation carrying on business as a lessor and vendor of scaffolding and concrete forming equipment.
 5. Laurentian is a corporation providing services and materials for the repair of wall siding, including scaffolding and metal cladding.

THE STAY

6. 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.



7. The Initial Order, which was subsequently amended on April 22, 2009, includes, *inter alia*, a stay of proceedings in favour of the Respondents that reads as follows:

*"10. **ORDERS** that, until and including May 14, 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 contract, by reason of this Order or otherwise, however and wherever taken (collectively the "**Proceedings**") may be 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 and 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 and 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 (collectively, the "**Property**"), and all Proceedings already commenced against the Petitioners, the 18.6 Petitioners or 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."*

8. The Stay Period was extended by orders of this Court dated respectively May 14th, 2009, September 4, 2009, December 11, 2009 and March 12, 2010 and June 9, 2010. On July 9, 2010, the Stay Period was extended until September 8, 2010, as appears from the Court record herein.

THE FACTS

THE PETITIONER ALUMA

9. On or about February 26, 1996, Aluma entered into a contract with Bowater Canadian Forest Products Inc./Bowater Produits Du Canada Inc. ("**Bowater**") for services and materials relating to the rental of scaffolding equipment with respect to an improvement at the lands municipally known as **2001** Neebing Avenue, Thunder Bay, Ontario.
10. From February 26, 2006 to April 16, 2009, Aluma provided services and materials relating to the rental of scaffolding equipment to Bowater.



11. Aluma has not received payment for the services and materials provided in accordance with the above-mentioned paragraphs.
12. On May 13, 2009, Aluma caused to be registered in the Land Registry Office for the Land Titles Division of Thunder Bay (No. 55) as Instrument No. TY82140 a Claim for Lien dated May 13, 2009 which is attached hereto as **EXHIBIT R-1**.
13. On June 24, 2009, Aluma issued a Certificate of Action and Statement of Claim in the amount of \$120,248.76 in the Superior Court of Justice in Thunder Bay, pursuant to the CLA in respect of Aluma's Claim for Lien. The Certificate of Action and Statement of Claim are attached hereto as **EXHIBIT R-2** and **EXHIBIT R-3**.
14. On June 25, 2009, Aluma registered the aforementioned Certificate of Action as Instrument Number TY84457, which is attached hereto as **EXHIBIT R-4**".
15. On June 26, 2009, service of the Statement of Claim and Certificate of Action was effected on Bowater Canadian Forest Products Inc./Bowater Produits Forestiers Du Canada Inc.

THE PETITIONER T. HARRIS

16. On or about January 11, 2009, T. Harris entered into a contract with AbitibiBowater Canada Inc. ("**AB Canada**") and/or Abitibi-Bowater Consolidated Inc. ("**AB Consolidated**") for services and materials relating to the supply of environmental and hazardous material services including but not limited to, hazardous material survey work, preparation of hazardous material specifications, inspection and testing of hazardous material remediation activities, and environmental site assessment and monitoring services at the lands municipally known as 1 Park Street, Iriquois Falls, Ontario.
17. From January 11, 2009 to April 16, 2009, T. Harris provided services and materials relating to the supply of environmental and hazardous material services to AB Canada and AB Consolidated.
18. T. Harris has not received payment for the services and materials provided in accordance with the above-mentioned paragraphs.
19. On May 29, 2009, T. Harris caused to be registered in the Land Registry Office for the Land Titles Division of Cochrane (No. 6) as Instrument No. CB53425 a Claim for Lien dated May 28, 2009 which is attached hereto as **EXHIBIT R-5**.
20. On July 8, 2009, T. Harris issued a Certificate of Action and Statement of Claim in the amount of \$34,991.25 in the Superior Court of Justice in Cochrane, pursuant to the CLA in respect of T. Harris' Claim for Lien. The Certificate of



Action and Statement of Claim are attached hereto as **EXHIBIT R-6** and **EXHIBIT R-7**.

21. On July 9, 2009 T. Harris registered the aforementioned Certificate of Action as Instrument Number CB54761, which is attached hereto as **EXHIBIT R-8**.
22. On July 9, 2009, service of the Statement of Claim and Certificate of Action was effected on Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc.

THE PETITIONER LAURENTIAN

23. On or about March 27, 2009, Laurentian entered into a contract with Abitibi-Consolidated Inc. ("**Abitibi Consolidated**") and/or Abitibi-Price Inc. ("**Abitibi-Price**") for services and materials relating to the fastening of a liner on the outside wall of their property at the lands municipally known as 1 Park Street, Iriquois Falls, Ontario.
24. From March 30, 2009 to April 9, 2009, Laurentian provided services and materials relating to the erection of a swing stage and repair of bulge in wall siding, including but not limited to the supply of caulking, thread rods, nuts, and washers.
25. Laurentian has not received payment for the services and materials provided in accordance with the above-mentioned paragraphs.
26. On April 23, 2009, Laurentian caused to be registered in the Land Registry Office for the Land Titles Division of Cochrane (No. 6) as Instrument Nos. CB52400 and CB52401, two Claims for Lien which are attached hereto as **EXHIBIT R-9**" and **EXHIBIT R-10**.
27. On June 26, 2009, Laurentian issued a Certificate of Action and Statement of Claim in the amount of \$24,130.17 in the Superior Court of Justice in Cochrane, pursuant to the CLA in respect of the aforementioned Claims for Lien. The Certificate of Action and Statement of Claim are attached hereto as **EXHIBIT R-11** and **EXHIBIT R-12**.
28. On June 30, 2009, Laurentian registered the aforementioned Certificate of Action as Instrument Number CB54514, which is attached hereto as **EXHIBIT R-13**.
29. On July 28, 2009, service of the Statement of Claim and Certificate of Action was effected on Abitibi Consolidated and Abitibi-Price.



A DECLARATION VALIDATING THE LIENS OF THE PETITIONERS OR IN THE ALTERNATIVE, AN ORDER *NUNC PRO TUNC* LIFTING THE STAY

30. In order to preserve all remedies and rights available to T. Harris, Aluma, and Laurentian under the CLA, the Petitioners hereby request that This Honourable Court declare the validity of the registration of their construction lien claims.
31. In the alternative, the Petitioners hereby request that this Honourable Court temporarily lift the Stay of Proceedings in favour of the Respondents, on a *nunc pro tunc* basis, for the sole purpose of allowing the Petitioners to register their construction lien claims.
32. The properties of the Respondents affected by the claims for liens (the "**Properties**") and the extent of said liens, are more fully described in the Construction Lien registration forms produced as **EXHIBIT R-14, EXHIBIT R-15, EXHIBIT R-18, EXHIBIT R-17 and EXHIBIT R-18;**
33. The right of the Petitioners' lien claims arose before the Initial Order as all services and materials were supplied before April 17, 2009.
34. The Petitioners were therefore de facto lien claimants before the Initial Order and are entitled to preserve their rights under the CLA by the registration of their claims for liens in the proper land registry office on the title of the premises.
35. The Petitioners would suffer grave prejudice if the present Motion was not granted since they would be in a position different to all the other creditors with construction lien rights.
36. 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 *nunc pro tunc* the Stay of Proceedings provided for in the Initial Order issued by the undersigned in favour of AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc. and the other PETITIONERS listed on Schedules "A", "B" and "C" on April 17, 2009 as amended, and as extended on July 9, 2010 for the sole purpose of allowing the registration of the Construction Liens of T. Harris Environmental Management Inc., Aluma Systems Inc. and Laurentian Insulations 1982 Limited, produced as **EXHIBITS R-15, R-16, R-17 and R-18**, the issuance and registration of their Certificate of Action produced as **EXHIBITS R-4, R-8, R-13 and R-14**, and the issuance and service of their Statements of Claim produced as **EXHIBITS R-3, R-7, R-12**.



DECLARE that the registration of the Construction Lien, the issuance and registration of the Certificate of Action, issuance and service of the Statements of Claim of T. Harris Environmental Management Inc., Aluma Systems Inc. and Laurentian Insulations 1982 Limited are hereby authorized.

THE WHOLE without costs.

MONTREAL, this 17 day of August, 2010

*Lapointe Rosenstein
Marchand Melançon*

**LAPOINTE ROSENSTEIN MARCHAND
MELANÇON L.L.P.**

Attorneys for the Petitioners T. Harris
Environmental Management Inc.
and Aluma Systems Canada Inc.

(#1174724-v1-)



**LAPOINTE ROSENSTEIN
MARCHAND MELANÇON**
L.L.P. Attorneys

NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the *Motion to lift temporarily the stay of proceedings* will be presented for adjudication before the honourable Justice Clément Gascon of the Superior Court, sitting in commercial division for the District of Montreal, in a room to be announced of the Montreal Court House, 1 Notre-Dame St. East, on a date and hour to be determined by Justice Gascon.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, this 17 day of August, 2010

*Lapointe Rosenstein
Marchand Melançon*

**LAPOINTE ROSENSTEIN MARCHAND
MELANÇON L.L.P.**

Attorneys for the Petitioners T. Harris
Environmental Management Inc.
and Aluma Systems Canada Inc.



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
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C A N A D A
PROVINCE OF QUEBEC
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BOWATER CANADIAN HOLDINGS INC.

-and-

**THE OTHER PETITIONERS LISTED ON
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vs.

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MANAGEMENT INC.; ALUMA SYSTEMS
INC. and LAURENTIAN INSULATIONS 1982
LIMITED**

Petitioners

-and-



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ERNST & YOUNG INC., in its capacity as
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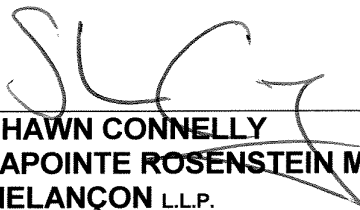
Mise-en-cause

ATTESTATION OF AUTHENTICITY
(ART. 82.1 C.C.P.)

I, the undersigned, **SHAWN CONNELLY**, attorney, practising my profession with the law firm of Lapointe Rosenstein Marchand Melançon, L.L.P., located at Suite 1400, 1250 René-Lévesque Boulevard West, in Montreal, City and District, H3B 5E9, certify the following:

1. On August 17, 2010, at 1:55 p.m., I received by fax from Mr. Craig A. Lewis, the Affidavit in support of the document entitled "*Motion to lift temporarily the stay of proceedings*", in the matter of the Superior Court, District of Montreal, bearing docket number 500-11-036133-094;
2. Mr. Craig A. Lewis has transmitted me his Affidavit from the fax number: 416-534-9503;
3. The copy of this Affidavit attached to the present Certificate of Authenticity is a true copy to the fax received by fax from Mr. Craig A. Lewis.

MONTREAL, this 17 day of August, 2010


SHAWN CONNELLY
LAPOINTE ROSENSTEIN MARCHAND
MELANÇON L.L.P.

Attorneys for the Petitioners T. Harris
Environmental Management Inc.
and Aluma Systems Canada Inc.



AFFIDAVIT

I, the undersigned, Craig A. Lewis, practising at the City of Toronto in the province of Ontario, having been duly sworn, do depose and say:

1. I am a duly authorized representative of the Petitioners, T. Harris Environmental Management Inc., Aluma Systems Inc., and Laurentian Insulations 1982 Limited, in the present instance;
2. All the facts alleged in the present Motion are true.



CRAIG A. LEWIS

Solemnly declared before me,
in ~~Toronto~~ this 17th day of August, 2010



Commissioner for Oaths

David Alexander Burton, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires June 11, 2013.
(#1174724-v2-)



**LAPOINTE ROSENSTEIN
MARCHAND MELANÇON**
LLP Attorneys

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

Nº: 500-11-036133-094

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Companies' Creditors Arrangement Act
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BOWATER CANADIAN HOLDINGS INC.

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**THE OTHER PETITIONERS LISTED ON
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Respondents

vs.

**T. HARRIS ENVIRONMENTAL
MANAGEMENT INC.; ALUMA SYSTEMS
INC., LAURENTIAN INSULATIONS 1982
LIMITED,**

Petitioners



**LAPOINTE ROSENSTEIN
MARCHAND MELANÇON**
L.L.P. Attorneys

- 4 -

-and-

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

Mise-en-cause

**NOTICE OF DISCLOSURE OF ADDITIONAL EXHIBITS
(ART. 331.2 C.P.C.)**

TAKE NOTICE that at the hearing, Petitioners **T. HARRIS ENVIRONMENTAL MANAGEMENT INC.**; **ALUMA SYSTEMS INC.**, and **LAURENTIAN INSULATIONS 1982 LIMITED**, intend to refer to in support of their *Motion to lift temporarily the stay of proceedings* the following Exhibits:

- EXHIBIT R-1** Claim for Lien registered dated May 13, 2009 in the Land Registry Office for the Land Titles Division of Thunder Bay (No. 55) as Instrument No. TY82140;
- EXHIBIT R-2** Certificate of action dated June 24, 2009;
- EXHIBIT R-3** Statement of Claim dated June 24, 2009;
- EXHIBIT R-4** Certificate of Action registered on June 25, 2009 as Instrument Number TY84457;
- EXHIBIT R-5** Claim for Lien dated May 28, 2009 registered in the Land Registry Office for the Land Titles Division of Cochrane (No. 6) as Instrument No. CB53425 on May 29, 2009;
- EXHIBIT R-6** Certificate of action dated July 8, 2009.
- EXHIBIT R-7** Statement of claim dated July 8, 2009;
- EXHIBIT R-8** Certificate of Action registered as Instrument Number CB54761 on July 9, 2009;
- EXHIBIT R-9** Claims for Lien registered on April 23, 2009, in the Land Registry Office for the Land Titles Division of Cochrane (No. 6) as Instrument No. CB52400



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- EXHIBIT R-10** Claims for Lien registered on April 23, 2009, in the Land Registry Office for the Land Titles Division of Cochrane (No. 6) as Instrument CB52401;
- EXHIBIT R-11** Certificate of action dated June 26, 2009;
- EXHIBIT R-12** Statement of claim dated June 26, 2009;
- EXHIBIT R-13** Certificate of action registered as Instrument Number CB54514 on June 30, 2009;
- EXHIBIT R-14** Construction Lien registration forms in regard to the properties of the Respondents affected by the claims for liens;
- EXHIBIT R-15** Construction Lien registration forms in regard to the properties of the Respondents affected by the claims for liens;
- EXHIBIT R-16** Construction Lien registration forms in regard to the properties of the Respondents affected by the claims for liens;
- EXHIBIT R-17** Construction Lien registration forms in regard to the properties of the Respondents affected by the claims for liens;
- EXHIBIT R-18** Construction Lien registration forms in regard to the properties of the Respondents affected by the claims for liens;

MONTREAL, this 17 day of August, 2010

Lapointe Rosenstein
Marchand Melançon

LAPOINTE ROSENSTEIN MARCHAND

MELANÇON L.L.P.

Attorneys for the Petitioners T. Harris
Environmental Management Inc.
and Aluma Systems Canada Inc.



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. ET ALS. Respondents vs. T. HARRIS ENVIRONMENTAL MANAGEMENT INC. et ALS. Petitioners and ERNST & YOUNG INC., Mise en cause
MOTION TO LIFT TEMPORARILY THE STAY OF PROCEEDINGS AND NOTICE OF DISCLOSURE OF ADDITIONAL EXHIBITS (ART. 331.2 CCP)
ORIGINAL
Our file n°: 21374.57442 Refer to Me Shawn Connelly
LAPORTE ROSENSTEIN MARCHAND MELANÇON L.L.P. Attorneys Suite 1400, 1250 René-Lévesque Blvd. West Montreal, Quebec H3B 5E9 Telephone: (514) 925-6300 Facsimile: (514) 925-9001

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