Cause No. M/M/114/12

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK	COUR DU BANC DE LA REINE DU NOUVEAU BRUNSWICK
TRIAL DIVISION	DIVISION TRIAL
JUDICIAL DISTRICT OF MONCTON	CIRCONSCRIPTION JUDICIAIRE DE
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, as amended	E N T R E :

- and -

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LANDDRILL INTERNATIONAL INC. (A BRITISH COLUMBIA CORPORATION), LANDDRILL INTERNATIONAL LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL ATLANTIC LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL CONTRACT MINING LTD. (A NEW BRUNSWICK CORPORATION), LANDDRILL INTERNATIONAL MEXICO S.A. DE C.V. (A MEXICAN CORPORATION), LANDDRILL INTERNATIONAL LLC (A MONGOLIAN CORPORATION) and LANDDRILL INTERNATIONAL INC. (A BARBADOS CORPORATION),

(collectively "the Applicants").

B E T W E E N :

MICHAEL TRIPP and ROGER ROGERS

Moving Parties,

- and -

LANDDRILL INTERNATIONAL INC.,

Respondent.

<u>AMENDED</u> NOTICE OF MOTION (FORM 37A)

AVIS DE MOTION (FORMULE 37A)

TO: The Respondent,
Landdrill International Inc.
c/o Stephen J. Hutchison
Stewart McKelvey
Barristers and Solicitors
1000-44 Chipman Hill
P.O. Box 7289, Station "A"
Saint John, NB E2L 2A9

DESTINATAIRE :

The Moving Parties, **Michael Tripp and Roger Rogers,** will apply to the Court at the Moncton Law Court, on the 22nd day of May, 2013, at <u>10:00</u> a.m. for an order:

(a) that Landdrill International Inc. (hereinafter "Landdrill"), or alternatively, the Monitor of Landdrill's behalf, be required to remit $15,410.05 to the Canada Revenue Agency in respect of unpaid remittances due as a result of the payment of a retention bonus of $30,000.00, net of income tax, to Michael Tripp (hereinafter "Tripp") by Landdrill;

(b) requiring Landdrill to amend Tripp's 2012 T-4 to reflect the additional remittance of $15,410.05;

(c) that Landdrill or alternatively, the Monitor of Landdrill's behalf, be required to remit $9,710.05 to the Canada Revenue Agency in respect of unpaid remittances due as a result of the payment of a retention bonus of $30,000.00, net of income tax, to Roger Rogers (hereinafter "Rogers") by Landdrill;

(d) requiring Landdrill to amend Rogers' 2012 T-4 to reflect the additional remittance of $9,710.05

(e) that Landdrill or alternatively, the Monitor of Landdrill's behalf, be required to pay to

Le demandeur *(ou selon le cas)* demandera à la Cour à . . . . *(lieu précis)* . . . ., le . . . . . . 20. . . . ., à . . . . . h . . . . ., d'ordonner *(indiquer l'ordonnance demandée, les motifs à discuter et les renvois aux dispositions léglislatives ou règles qui seront invoquées)*;

Tripp the amount of $150.00 for which he was overbilled on the sale of a laptop upon his departure from employment in 2012;

(f) costs; and

(g) such further and other relief as this Honourable Court may deem just.

The grounds upon which the Moving Parties intends to rely are as follows:

1. Tripp was employed by Landdrill from February 17, 2012, until November 20, 2012, as Corporate Counsel.

2. Rogers was employed by Landdrill from early June 2012 until November 23, 2012, as Chief Financial Officer;

3. On or about July 11th, 2012, Landdrill entered into a Retention Agreement with Tripp (hereinafter the "Tripp Retention Agreement") whereby Landdrill agreed to pay Tripp $30,000.00 net of income tax in consideration for the agreement by Tripp to remain employed by the company.

4. Pursuant to the Tripp Retention Agreement, Landdrill was required to make sufficient remittance to the Canada Revenue Agency so that Tripp received the full benefit of the $30,000.00 retention bonus net of income tax.

5. Landdrill remitted only $7,500.00 in respect of the retention bonus, which amount was an insufficient remittance to ensure that Tripp received the full benefit of the $30,000.00 retention bonus net of income tax.

6. The New Brunswick tax rate applicable to Tripp for the year 2012 is 43.3%.

7. On the basis of the tax rate of 43.3%, Landdrill ought to have remitted a total of $22,910.05 to CRA. As a result of Landdrill remitting insufficient funds to CRA, Tripp has not received the full benefit of the $30,000.00 retention bonus net of income tax as required pursuant to the Tripp Retention Agreement and has incurred a large tax liability to CRA.

8. An additional $15,410.05 must be remitted by Landdrill pursuant to the terms of the Tripp Retention Agreement in order for Tripp to receive the benefit of the full $30,000.00 retention bonus net of taxes.

9. In addition, the T-4 initially issued by Landdrill to Tripp for the taxation year 2012 overstated his income by $75,493.81. This was subsequently amended and a second T-4 was issued to Tripp for the taxation year 2012.

10. The amended T-4 does not reflect the additional remittance of $15,410.05 to CRA as required by the Tripp Retention Agreement and should be amended.

11. On or about July 11th, 2012, Landdrill entered into a Retention Agreement with Rogers (hereinafter the "Rogers Retention Agreement") whereby Landdrill agreed to pay Rogers $30,000.00 net of income tax in consideration for the agreement by Rogers to remain employed by the company.

12. Pursuant to the Rogers Retention Agreement, Landdrill was required to make sufficient remittance to the Canada Revenue Agency so that Rogers received the full benefit of the $30,000.00 retention bonus net of income tax.

13. Landdrill remitted only $13,200.00 in respect of the retention bonus, which amount was an insufficient remittance to ensure that Rogers received the full benefit of the $30,000.00 retention bonus net of income tax.

14. The New Brunswick tax rate applicable to Rogers for the year 2012 is 43.3%.

15. On the basis of the tax rate of 43.3%, Landdrill ought to have remitted a total of $22,910.05 to CRA. As a result of Landdrill remitting insufficient funds to CRA, Rogers has not received the full benefit of the $30,000.00 retention bonus net of income tax as required pursuant to the Rogers Retention Agreement and has incurred a large tax liability to CRA.

16. An additional $9,710.05 must be remitted by Landdrill pursuant to the terms of the Rogers Retention Agreement in order for Rogers to receive the benefit of the full $30,000.00 retention bonus net of taxes.

17. In addition, the T-4 issued by Landdrill to Rogers for the taxation year 2012 should be amended to reflect the additional remittance of $9,710.05.

18. Upon his termination from employment by Landdrill, Tripp was permitted to purchase a laptop belonging to the Company. The Monitor agreed to a valuation for the laptop of $50.00; however, Landdrill withheld $200.00 from Tripp's last pay in respect of the laptop.

19. Landdrill should be required to pay to Tripp $150.00 to reimburse him for the unauthorized amount of deduction from his last pay.

The Moving Parties intends to rely on the following Statutes and Rules:

(a) the *Income Tax Act*, R.S.C. 1985, c. 1) and the *Income Tax Regulation*, C.R.C., c.945;

(b) such other Statutes and Rules as counsel may advise.

Upon the hearing of the motion the following affidavits or other documentary evidence will be presented:

(a) the Affidavit of Michael Tripp sworn to on the 21st day of May, 2013; and

(b) the Affidavit of Roger Rogers sworn to on the 20th day of May, 2013.

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées: *(énumérer les preuves littérales qui seront utilisées lors de l'audition de la requête).*

You are advised that:

(a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

(b) the Moving Parties intends to proceed in the English language; and

(c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 7 days before the hearing.

DATED at Saint John, NB, this 21st day of May, 2013.

Sachez que :

a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;

b) le demandeur *(ou selon le cas)* a l'intention d'utiliser la langue . . . .; et

c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 7 jours avant l'audience.

FAIT à . . . . le . . . . 20. . . . .

for Nathalie Godbout

Matthew R. Letson
of Lawson Creamer
Solicitors for the Moving Parties

. . . .
Avocat du demandeur *(ou selon le cas)*

LAWSON CREAMER
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