



No. S212302  
Vancouver Registry

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 ENCOREFX INC.

PETITIONER

**ORDER MADE AFTER HEARING  
(Conversion Order)**

BEFORE

)	)
) THE HONOURABLE	) MARCH 30, 2021
) MADAM JUSTICE FITZPATRICK	)
)	)

**ON THE APPLICATION** of the Petitioner, EncoreFX Inc. ("**EncoreFX**"), by its Trustee in Bankruptcy, Ernst & Young Inc. and not in its personal capacity, coming on for hearing, via MS Teams, at the Law Courts, 800 Smithe Street, in the City of Vancouver, British Columbia, on the 30<sup>th</sup> day of March, 2021 (the "**Order Date**"); **AND ON HEARING** William E.J. Skelly, counsel for Ernst and Young Inc. ("**EY**") in its capacity as the Trustee in Bankruptcy (the "**Trustee**") and in its proposed role as the monitor (the "**Monitor**") of EncoreFX, and those other counsel listed on **Schedule "A"** hereto; **AND ON NOTING** the consent of EY to act as Monitor; **AND ON READING** the pre-filing report of the proposed Monitor dated March 11, 2021 (the "**Pre-Filing Report**"); **AND ON BEING ADVISED** that the Trustee seeks to convert the bankruptcy of EncoreFX into a liquidating proceeding pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"); **AND PURSUANT TO** the CCAA, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS AND DECLARES THAT:**

**SERVICE**

1. The time for service of this Petition and Notice of Hearing and the supporting materials in respect thereof is hereby abridged and validated so that this Notice of Hearing is properly returnable on the date of this Order (the “**Order Date**”), and further service is hereby dispensed with.

**JURISDICTION**

2. EncoreFX is a company to which the CCAA applies.

**CONTINUANCE UNDER THE CCAA**

3. Effective March 30, 2021, EncoreFX’s bankruptcy proceedings bearing Court File No. VLC-S-B-200204 and bankruptcy Estate No.11-2634864 (the “**BIA Proceedings**”) commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) are hereby taken up and continued under the CCAA and as of such date, the BIA Proceedings are hereby stayed (the “**Stay**”) pending further application, save that any and all sales, disposition of property, payments duly made, acts done, steps, agreements and procedures validly taken, done or entered into by EncoreFX or the Trustee during the BIA Proceedings shall remain valid, binding, and actionable within these proceedings (the “**CCAA Proceedings**”), notwithstanding the commencement of the CCAA Proceedings, including but not limited to:

- a. the sale of any assets, property or undertaking of any of EncoreFX that was approved by this Court or otherwise permitted in the BIA Proceedings;
- b. the examination of any proofs of claim delivered by a creditor of EncoreFX within the BIA Proceedings pursuant to s. 81 and s. 124 of the BIA, including but not limited to proofs of claim for which a final determination as to the admission or disallowance of such proofs of claim was not finalized as at the granting of this Order;

- c. the continuation of all proceedings, including in respect of the following:
- (i) any litigation proceedings commenced by the Trustee as against any OTM Clients (as defined at paragraph 50 of the Pre-Filing Report) (the "**OTM Client Claims**") and the Monitor is authorised and directed to file amended OTM Client Claims wherein the amendment shall be to change the capacity in which EY has sued the defendants from its capacity as Trustee to its capacity as Monitor of EncoreFX (the "**Amended OTM Client Claims**")
  - (ii) any extant Property Claims, including any appeals thereof (as defined at paragraph 62 of the Pre-Filing Report);
  - (iii) any extant EFT Reversals (as defined at paragraph 77 of the Pre-Filing Report), including any appeals thereof;
  - (iv) any claim advanced by EY in respect of the AgraCity Double Dip Amount (as defined at paragraph 83 of the Pre-Filing Report);
  - (v) the Proof of Claim in respect of the Australian Subsidiary (as defined at paragraph 12 of the Petition filed on March 11, 2021); and
  - (vi) the mediation (as referenced at paragraph 55 of the Pre-Filing Report).

4. All orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceeding apply to and are continued under the CCAA Proceedings, except as amended by the terms of this Order.

5. This Order shall be filed in the BIA Proceedings.

## **SUBSEQUENT HEARING DATE**

6. The hearing of EncoreFX's application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse (or as determined by the Court) at 800 Smithe Street, Vancouver, British Columbia at 2:00 p.m. on Thursday, the 8<sup>th</sup> day of April, 2021 or such other date as this Court may order.

## **PLAN OF ARRANGEMENT**

7. EncoreFX shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

8. Subject to this Order and any further Order of this Court, EY shall remain in possession and control of EncoreFX's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to administer EncoreFX's business (the "**Business**") in a manner consistent with the preservation of the Business and the Property. EY shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

9. EY shall be entitled, but not required, to pay the following expenses which may have been incurred by EncoreFX prior to March 30, 2020 (the "**Bankruptcy Date**"):

- a. all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Bankruptcy Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation



policies and arrangements existing at the time incurred (collectively “Wages”);  
and

- b. the fees and disbursements of any Assistants retained or employed by EncoreFX which are related to EncoreFX’s liquidation, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by EY, whenever and wherever incurred, in respect of:
  - i. these proceedings or any other similar proceedings in other jurisdictions in which EncoreFX is domiciled;
  - ii. any litigation in which EncoreFX is named as a party or is otherwise involved, whether commenced before or after the Bankruptcy Date; and
  - iii. any related corporate matters.

10. Except as otherwise provided herein, EY shall be entitled to pay all expenses reasonably incurred in carrying on the Business of EncoreFX following the Bankruptcy Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all obligations incurred by EncoreFX after the Bankruptcy Date, including without limitation, with respect to goods and services actually supplied to EncoreFX following the Bankruptcy Date; and
- b. fees and disbursements of the kind referred to in paragraph 9.b. which may be incurred after the Bankruptcy Date.

11. EY is authorized to remit, in accordance with legal requirements, or pay:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by EncoreFX in connection with the sale of goods and services by EncoreFX, but only where such Sales Taxes accrue or are collected after the Bankruptcy Date, or where such Sales Taxes accrued or were collected prior to the Bankruptcy Date but not required to be remitted until on or after the Bankruptcy Date; and
- c. any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

12. Except as specifically permitted herein, EY is hereby directed, until further Order of this Court:

- a. to make no payments of principal, interest thereon or otherwise on account of amounts owing by EncoreFX to any of its creditors as of the Bankruptcy Date except as authorized by this Order;
- b. to make no payments in respect of any financing leases which create security interests;
- c. to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of EncoreFX's Property, nor allow EncoreFX to become a guarantor or surety, nor otherwise to allow EncoreFX to become liable in any manner with respect to any other person or entity except as authorized by this Order;
- d. to not grant credit except in the ordinary course of the Business only to EncoreFX customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing

for such goods and services against any debt owing by EncoreFX to such customers as of the Bankruptcy Date; and

- e. to not incur liabilities except in the ordinary course of Business.

## LIQUIDATION

13. Subject to such requirements as are imposed by the CCAA, EY shall have the right to take any and all steps necessary to realize upon and liquidate the assets of EncoreFX, including but not limited to the following:

- a. permanently or temporarily cease, downsize or shut down all or any part of EncoreFX's Business or operations and commence marketing efforts in respect of any of EncoreFX's redundant or non-material assets;
- b. terminate the employment of such of EncoreFX's employees or temporarily lay off such of EncoreFX's employees as it deems appropriate; and
- c. continue to collect the amounts owed to EncoreFX by, inter alia, pursuing litigation claims or causes of action which have been commenced by EY in the BIA Proceedings or initiating new proceedings within the CCAA Proceedings.

all of the foregoing to permit EY to proceed with an orderly liquidation of EncoreFX's Business (the "**Liquidation**").

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), EY, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Liquidation or to prepare and implement the Plan or transactions for that purpose;



provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with EY binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Liquidation or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to EY or destroy it. If the Third Parties acquire personal information as part of the Liquidation or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by EY.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

15. Until and including April 9, 2021 or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of EncoreFX or EY, or affecting the Business or the Property, shall be commenced or continued except with the written consent of EY or with leave of this Court, and any and all Proceedings currently under way against or in respect of EncoreFX or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of EncoreFX or EY, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of EY or leave of this Court.

17. Nothing in this Order, including paragraphs 8 and 9, shall: (i) empower EY to carry on any business which EncoreFX is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security



interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on EY.

#### **NO INTERFERENCE WITH RIGHTS**

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by EncoreFX, except with the written consent of EY or leave of this Court.

#### **CONTINUATION OF SERVICES**

19. During the Stay Period, all Persons having oral or written agreements with EncoreFX or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or EncoreFX, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by EY, and that EY shall be entitled to the continued use of EncoreFX's telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Bankruptcy Date are paid by EY in accordance with normal payment practices of EncoreFX or such other practices as may be agreed upon by the supplier or service provider and EY, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Bankruptcy Date, nor shall any Person be under any

obligation to advance or re-advance any monies or otherwise extend any credit to EncoreFX on or after the Bankruptcy Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **APPOINTMENT OF MONITOR**

21. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of EncoreFX with the powers and obligations set out in the CCAA or set forth herein.

22. EY, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. prepare EncoreFX's receipts and disbursements;
- b. report to this Court at such times and intervals as EY may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- c. develop and amend the Plan;
- d. hold and administer creditors' or shareholders' meetings for voting on the Plan;
- e. continue to be vested with EncoreFX's Property, including the premises, books, records, data, including data in electronic form, and other financial documents of EncoreFX;
- f. be at liberty to engage independent legal counsel or such other persons as EY deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- g. to receive and collect all monies and accounts now owed or hereafter owing to EncoreFX and to exercise all remedies of EncoreFX in collecting such monies, including, without limitation, to enforce any security held by EncoreFX;
- h. to settle, extend or compromise any indebtedness owing to or by the EncoreFX;
- i. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in EY's name or in the name and on behalf of the EncoreFX, for any purpose pursuant to this Order;
- j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to EncoreFX or the Property, including any such proceedings initiated by EY in its roles as the Trustee in the BIA Proceedings and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding; and
- k. perform such other duties as are required by this Order or by this Court from time to time.

23. EY shall continue to have possession of the Property for the purpose of the Liquidation. Nothing in this Order shall be construed as resulting in EY being an employer or a successor employer in its personal capacity, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

24. Nothing herein contained shall require or allow EY to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other



contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt EY from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, EY shall not, as a result of this Order or anything done in pursuance of its duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, EY shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

## **SERVICE AND NOTICE**

26. EY shall:

- (a) without delay, publish in the *Vancouver Sun*, *Times-Colonist* (Victoria), and *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA,
- (b) within five days after the Order Date,
  - (i) make this Order publicly available in the manner prescribed under the CCAA,
  - (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against EncoreFX, and

- (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

27. EY is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to EncoreFX's creditors or other interested parties at their respective addresses as last shown on the records of EncoreFX and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to EY by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to the Service List to be maintained by EY. EY shall post and maintain an up to date form of the Service List on its website at: [www.ey.com/ca/EncoreFX](http://www.ey.com/ca/EncoreFX).

29. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and EY shall post a copy of all prescribed materials on its website at: [www.ey.com/ca/EncoreFX/](http://www.ey.com/ca/EncoreFX/).

30. Notwithstanding paragraphs 26-28 of this Order, service of the Petition, the Notice of Hearing of Petition, any evidence or reporting filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## GENERAL

31. EY may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

32. Nothing in this Order shall prevent EY from acting as an interim receiver, a receiver, a receiver and manager, or continuing to act as the trustee in bankruptcy of EncoreFX, the Business or the Property.

33. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to EY, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to EY in any foreign proceeding, or to assist EY and its respective agents in carrying out the terms of this Order.

34. EY is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of EncoreFX to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

35. Upon any Plan being rejected by the creditors of EncoreFX or the Court refusing to sanction a Plan, any interested party may seek an order that the Stay be lifted and the BIA Proceedings be reinstated.



36. EY is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

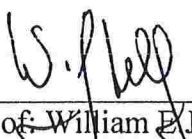
37. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

38. Any interested party (including EY) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

39. Endorsement of this Order by counsel appearing on this application, other than counsel for the Trustee and the Monitor, is hereby dispensed with.

40. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of William E.J. Skelly / Dana M. Nowak

☐ Party ☒ Lawyer for the Petitioner, Ernst & Young in its capacity as Trustee and/or Monitor of EncoreFX Inc., and not its personal capacity

**Certified a true copy according to  
the records of the Supreme Court  
at Vancouver, B.C.**

**DATED: APR 01 2021**

  
\_\_\_\_\_  
**Authorized Signing Officer**

**ARDELIS YEUNG**

  
BY THE COURT

\_\_\_\_\_  
**REGISTRAR**

**CHECKED**  


## SCHEDULE "A"

### List of Counsel

<b>Name of Counsel</b>	<b>Party Represented</b>
William E.J. Skelly; Dana M. Nowak	Counsel for the Trustee and Proposed Monitor
Lee Nicholson	Counsel for Andreas Wrede
Heather Doi	Counsel for Andreas Wrede
Peter Vaartnou	Counsel for Gustavson Capital Corporation
Brandon Barnes Trickett	Counsel for Gustavson Capital Corporation
Sandy Ma	Counsel for the Office of the Superintendent of Bankruptcy
John Grieve, QC	Counsel for Annexair Inc., Casmark Seafoods Ltd., Commerce Rosen Inc., Dynamic Windows and Doors Inc., Metalab Design Ltd., Fraser Valley Packers Inc., Shaw Almex Industries Limited, Trinity Organic Produce Inc., Kefiplant Inc., and Nu Era Logistics Inc.
Haddon Murray	Counsel for Electrolab Limited, Roll Tide Solutions Inc., The Hi Tech Gears Canada Inc., and Watt and Stewart Commodities Inc.
Lisa Hebert	Counsel for Bank of Montreal
Thomas D. Boyd	Counsel for Controlled Environmental Limited and Robert Allan Ltd.
Craig Frith	Counsel for Great Northern Growers Inc.