



No. S-086670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *TRUSTEE ACT*
R.S.B.C. 1996, c. 464 as amended

AND

LAW AND EQUITY ACT

R.S.B.C. 1996, c. 253 as amended

AND

**ELITE FX LIMITED PARTNERSHIP
ELITE FX MANAGEMENT INC.
ELITE FX INVESTMENTS INC.
ELITE FX TRADING INC.**

NOTICE OF APPLICATION

Name of Applicant: Boale Wood & Company Ltd., in its capacity as Judicial Trustee and Receiver of Elite FX Limited Partnership, Elite FX Management Inc., Elite FX Investments Inc., and Elite FX Trading Inc. (collectively “**Elite FX**”)

To: The Limited Partners of Elite FX; and E. Sands & Associates Inc., in its capacity as Trustee in Bankruptcy of the Estate of Horizon FX Limited Partnership

TAKE NOTICE that an application will be made by the Boale Wood & Company Ltd. in its capacity as Judicial Trustee and Receiver of Elite FX Limited Partnership, Elite FX Management Inc., Elite FX Investments Inc., and Elite FX Trading Inc. (in that capacity, the “**Judicial Trustee**”) to the presiding judge or master at the Courthouse at **800 Smithe Street, in the City of Vancouver**, in the Province of British Columbia on **Friday November 18, 2011, at 9:45 a.m.** for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order approving a final distribution in the manner and in such amounts as set out in The Report of the Judicial Trustee dated October 20, 2011, and in particular:
 - a. an Order and Declaration approving the payment by the Judicial Trustee to E. Sands & Associates Inc., in its capacity as Trustee in Bankruptcy of the Estate of Horizon FX Limited Partnership;
 - b. an Order and Declaration that the Judicial Trustee shall not make any distribution to the commissioned salespeople of Elite FX; and
 - c. an Order and Declaration that that investors that have not submitted a claim to the Judicial Trustee to-date are no longer entitled to share in any distributions made by the Judicial Trustee;
 - d. an Order and Declaration authorizing the Judicial Trustee to pay into Court to the credit of this proceeding any unclaimed distributions to Proven Creditors;
2. An Order summarily approving the accounts of the Judicial Trustee for the period up to and including the date of this Order, in the aggregate amount of \$120,000.00 as set out in the Affidavit #2 of John McEown sworn and filed herein;
3. An Order summarily approving the accounts of Lawson Lundell LLP, solicitors to the Judicial Trustee for the period up to and including the date of this Order, in the aggregate amount of \$61,708.80, inclusive of taxes, as set out in the Affidavit #2 of John McEown sworn and filed herein; and
4. Upon the Judicial Trustee disbursing the remaining assets in the Estate in accordance paragraph 1 above, the Judicial Trustee be discharged without further order.

Part 2: FACTUAL BASIS

5. Pursuant to an Order pronounced December 5, 2008, the Judicial Trustee was appointed as Judicial Trustee and Receiver of Elite FX Limited Partnership, Elite FX Management Inc., Elite FX Investments Inc., and Elite FX Trading Inc. (collectively “Elite FX”)

6. Elite FX Management Inc. in its capacity as General Partner of Elite FX Limited Partnership filed an application pursuant to the provisions of the *Trustee Act* and the *Law and Equity Act* and was granted an order by Mr. Justice Cole. Boale Wood & Company Ltd. (the “**Judicial Trustee**”) was appointed as Judicial Trustee and Receiver of all the assets and undertakings of Elite FX.
7. Since its appointment the Judicial Trustee’s mandate has been to take possession and control of the property of Elite FX, including the recovery of monies owed to Elite FX, and to distribute the same on a fair and equitable basis to the stakeholders in Elite FX.
8. On March 20, 2009, the Judicial Trustee was granted an order which approved and set out the claims process and scheme of distribution.
9. As set out in the Judicial Trustee’s Final Report to the court dated October 20, 2011 and filed herein (the “**Report**”) in September 2006 approximately 65% of the Limited Partners of Elite FX transferred their investment from Elite FX to a new Limited Partnership named Horizon FX that was formed by Gem Ali, a former Director of the Elite FX.
10. Horizon FX and its related companies are now bankrupt. The Trustee of Horizon FX, upon review the records of Horizon FX and discussions with Gem Ali, has determined that the claim submitted by Elite FX against Razor FX that resulted in a recovery from the US Treasury of approximately \$1,500,000 improperly included funds that were intended to be transferred from Elite FX to Horizon FX investors.
11. The Judicial Trustee has reviewed the claim submitted by Elite FX against Razor FX and concurs that Elite FX’s claim includes amounts invested by the Horizon FX investors that should properly have been claimed by Horizon FX and paid to the Trustee in Bankruptcy of Horizon FX.
12. The Judicial Trustee has met with the Trustee in Bankruptcy of Horizon FX and reached an agreement, subject to Court approval, to allow Horizon FX to submit a claim against Elite FX for \$450,452.38 which represents the amount that Horizon FX has paid out to Horizon FX Investors that were formerly investors Elite FX.

13. Had the investments accounts been properly transferred from Elite FX to Horizon FX this amount would have been claimable by Horizon FX against Razor. If Horizon FX is permitted to make a claim against Elite FX in this amount, The Trustee of Horizon FX will receive a distribution of approximately \$180,000 from Elite FX for the benefit of the investors of Horizon FX.
14. At the Court hearing on March 20, 2009, certain creditors voiced their opposition to commissioned salespeople be treated the same as other investors. Based on this opposition the Court ordered that the Judicial Trustee withhold any distributions to commissioned sales people of Elite FX, with leave to the commissioned salespeople to make application to Court to seek orders allowing them to participate in the distributions.
15. The Judicial Trustee is not aware of any applications having been made by any commissioned salespeople to have their claims accepted and treated the same as the claims of the other investors.
16. The Judicial Trustee has received claims from 9 commissioned salespeople totalling \$122,502.71.
17. Given that there was opposition by certain investors at the hearing held on March 20, 2009, and that no commissioned salespeople have made an application to the Court to have their claim accepted and treated the same as the claims of the other investors, the Judicial Trustee is of the view that commissioned salespeople should not be allowed to share in any distributions being made by the Judicial Trustee.
18. The Judicial Trustee is now in a position to issue its final statement of receipts and disbursements and to make the final distribution in this administration.
19. The final pro rata distribution to proven claimants represents approximately 9.5% of their Proven Claim resulting in a total distribution of approximately 39.5% of their Proven Claim.
20. The Judicial Trustee's fees for this administration total \$120,000.00 which is less than 5% of the amount distributed to investors. The legal fees and disbursements for this

administration total \$61,708.80, inclusive of taxes which represents approximately 2% of the amount distributed to investors.

21. Upon the direction of the Court, the Judicial Trustee intends to pay the remaining administration costs, make a final distribution to the investors and three months thereafter pay into Court any unclaimed distributions.

Part 3 LEGAL BASIS

22. Order pronounced herein October 9, 2008, appointing the Judicial Trustee; and
23. Claims Process and Distribution Order pronounced herein March 20, 2009.

Part 4: MATERIAL TO BE RELIED ON

24. Affidavit #1 of John McEown sworn February 17, 2009;
25. Initial Report to the Court of the Judicial Trustee dated November 20, 2008.
26. Report to the Court of the Judicial Trustee dated October 20, 2011; and
27. Affidavit #2 of John McEown sworn October 25, 2011.

The Applicant estimates that the application will take 10 minutes.

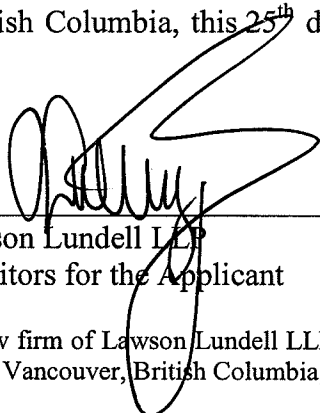
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

1. file an Application Response in Form 33,
2. file the original of every affidavit, and every other document, that
 - (a) you intend to refer to at the hearing of this application, and
 - (b) has not already been filed in the proceeding, and
3. serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (a) a copy of the filed Application Response;
- (b) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (c) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 25th day of October, 2011.



Lawson Lundell LLP
Solicitors for the Applicant

This Notice of Application is filed by William L. Roberts, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

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Barristers & Solicitors
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925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: William L. Roberts