

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)
JUSTICE ~~HAINES~~ WILTON-SIEGEL)

WEDNESDAY, THE
31st DAY OF OCTOBER, 2018

AWD



BETWEEN:

STRONACH CONSULTING CORP.

Applicant

-and-

BIONX CANADA INC.

Respondent

APPROVAL AND VESTING ORDER
(Amego IP Sale Agreement)

THIS MOTION, made by Grant Thornton Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of BionX Canada Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by the asset purchase agreement (the “**Amego Sale Agreement**”) between the Receiver and Amego Electric Vehicles Inc. (the “**Purchaser**”) dated July 24, 2018 and appended to the Fourth Report of the Receiver dated October 18, 2018 (the “**Report**”), and vesting of the Purchased Assets (as defined in the Amego Sale Agreement) in the Purchaser, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver and any other parties as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Caitlin Fell sworn October 29, 2018 filed (the “**Affidavit of Service**”):

SERVICE

1. **THIS COURT ORDERS** that the filing and service of the Notice of Motion and Motion Record, including method and timing of notice and service, pursuant to the E-Service Protocol of the Commercial List, or otherwise in the manner described in the Affidavit of Service, is hereby approved and validated and that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SALE TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Amego Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and/or one or more entities nominated by the Purchaser to take title to the Purchased Assets (the “**Purchaser Nominee**”) in accordance with the Amego Sale Agreement.

3. **THIS COURT ORDERS** that the Purchaser is hereby authorized in connection with the consummation of the Transaction to allocate the Purchased Assets among any Purchaser Nominee in a manner as it in its sole discretion deems appropriate and to assign, lease, sublease, licence, sublicense, transfer or otherwise dispose of any of the Purchased Assets to any Purchaser Nominee in each case with all of the rights and protections accorded to the Purchaser under this Order and the Amego Sale Agreement as if it were the named Purchaser under the Amego Sale Agreement. The allocation of any assets to a Purchaser Nominee pursuant to the terms herein shall not release the Purchaser jointly or severally from any obligation or liability for the performance of the Purchaser’s obligations under the Amego Sale Agreement.

4. **THIS COURT ORDERS** that, to the extent permitted by law, neither the Purchaser nor any relevant Purchaser Nominee shall be a successor to the Debtor or Receiver and neither the Purchaser nor any Purchaser Nominee shall assume any liability of the Debtor or Receiver, other than as expressly provided for in the Amego Sale Agreement.

VESTING OF THE PURCHASED ASSETS

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and Debtor's right, title and interest in and to the Purchased Assets described in the Amego Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser and/or the Purchaser Nominee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated February 27, 2018 or any other Order of this Court; (ii) all charges, security interests or Claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, and (iii) all charges, interests, security interests or claims evidenced by registrations against title records of any intellectual property right registered at any intellectual property office in any jurisdiction of the world, including without limitation, the Canadian Intellectual Property Office and the United States Patent and Trademark Office (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that upon the registration in the Canadian Intellectual Property Office of a copy of this Order, the applicable Registrar is hereby directed to transfer all of the Debtors' right, title and interest in and to the Purchased Assets to the Purchaser and/or any Purchaser Nominee, free and clear of and from any and all Encumbrances.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted, *nunc pro tunc*, to disclose and transfer to the Purchaser and/or any Purchaser Nominee all personal information that may be imbedded in any intellectual property or software included within the Purchased Assets. The Purchaser and any Purchaser Nominee, as applicable, shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) the provisions of any federal or provincial legislation;

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-592741-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

STRONACH CONSULTING CORP.

Applicant

-and-

BIONX CANADA INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated February 27, 2018, Grant Thornton Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of BionX Canada Inc. (the “**Debtor**”).

B. Unless otherwise indicated herein, capitalized terms have the meanings ascribed to them in the asset purchase agreement dated July 24, 2018 (the “**Amego Sale Agreement**”) between the Receiver and Amego Electric Vehicles Inc. (the “**Purchaser**”).

C. Pursuant to an Order of the Court dated ●, 2018, the Court approved the Amego Sale Agreement and provided for the vesting in the Purchaser and/or Purchaser Nominee (as defined therein) of the Receiver’s and Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the

Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing (as defined in the Amego Sale Agreement) as set out in sections 5.1, 5.2 and 5.3 of the Amego Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 5.1, 5.2 and 5.3 of the Amego Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Grant Thornton Limited, in its capacity as
Receiver of the undertaking, property and
assets of BionX Canada Inc., and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

[Attached]

STRONACH CONSULTING CORP.
Applicant

BIONX CANADA INC.
and
Respondent

Court File No.: CV-18-592741-00CI

ONTARIO
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Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER
(Amego IP Sale Agreement)

BRAUTI THORNING ZIBARRAS LLP
161 Bay Street, Suite 2900
Toronto, ON M5J 2S1

Steven Weisz
LSUC No. 32102C
sweisz@btzlaw.ca

Caitlin Fell
LSUC No. 60001H
cfell@btzlaw.ca

Tel: 416.362.4567
Fax: 416.362.8410

Lawyers for the Court-Appointed Receiver