

Action No. 0901-18773
Court No: 25-093965

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETH FREDEEN

Plaintiff

-and-

ARTEVO CORPORATION, IRENE BESSE and CHRISTOPHER TALBOT

Defendants

RECEIVER'S FOURTH REPORT

SALE OF ASSETS

June 2, 2010

Alger & Associates Inc.

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Exhibits

1. Invitation for Offers Package dated April 9, 2010
2. Sample of Calgary Herald advertisement
3. Offer made by 1194005 Alberta Ltd. on May 10, 2010
4. Offer made by 1518494 Alberta Ltd. on May 10, 2010 and subsequent email removing conditions
5. Offer made by Roots and Wings Ltd. on May 10, 2010
6. Selling Notice re SMIF dated May 19, 2010.
7. Selling Notice re SMIF dated May 28, 2010.
8. Amended Statement of Claim for Action No. 0901-18773
9. Olympia Trust 15% Second Secured Debenture details
10. Outstanding accounts receivable as at May 13, 2010
11. List of miscellaneous assets as at May 13, 2010
12. Power Play's financial statements as at December 18, 2009
13. Receiver's Statement of Receipts and Disbursements from December 18, 2009 to May 13, 2010

Introduction

1. Alger and Associates Inc. (the "Receiver") was appointed Receiver and Manager on December 18, 2009 by Order of the Honourable Madam Justice J. Strekaf of the Court of Queen's Bench of Alberta of all Artevo Corporation's ("Artevo") current and future assets, undertakings and property of every nature and kind whatsoever.
2. The Receiver has previously reported on three occasions to this Court:
 - The Receiver's First Report dated February 10, 2010, which provided details as to the Receiver's preliminary activities, assets and undertakings of Artevo and intended course of action.
 - The Receiver's Second Report dated February 26, 2010 which informed the Court of a sales process conducted by the Receiver regarding specified assets and which sought to have a sale of these assets approved by the Court.
 - The Receiver's Third Report dated March 3, 2010 which provided supplementary information to the Second Report.
3. This is the Receiver's Fourth Report with respect to this appointment and is provided in conjunction with the Receiver's application to this Honourable Court for an Order approving the sale of the majority of Artevo's remaining assets, namely its investment in SMIF Holdings Inc. ("SMIF").

Limitations of Report

4. The information contained in this report has been obtained from the records of Artevo and its related entities. The Receiver has relied on this information and has not performed an audit, review or other verification of such information.

Assets Offered for Sale

5. A copy of the Invitation for Offers Package regarding the investment in SMIF is attached as Exhibit 1.
6. The assets offered for sale, as more fully described in Exhibit 1 consist of:
 - 50% of the issued and outstanding Class "A" common shares of SMIF (the "SMIF Shares"); and
 - Accounts Receivable owing from SMIF, estimated to be in the amount of \$568,503 as at April 7, 2010.

7. SMIF's only significant asset is a building located at 514 - 11th Avenue SW, Calgary and Artevo was the only tenant in this building. As more particularly detailed in the Invitation for Offers Package and the Receiver's first and second reports, there are a number of factors which complicate SMIF's affairs and therefore make this asset likely not attractive to a wide market:

- In the summer of 2007, the SMIF building began to settle and move. SMIF has obtained advice that the damage sustained to the building, which, based on a preliminary review, may cost as much as \$983,000 or more to repair, was caused by an excavation immediately adjacent to the property. A lawsuit was jointly commenced in December 2007 with the owner of the neighbouring building, 1004588 Alberta Ltd. ("1004588"), whose building was also damaged.
- The likelihood of being successful in this legal action and recovering the cost of repairs is further complicated as the project developer became insolvent, was placed into receivership and the partially finished project taken over by a new contractor. The original developer, a number of its subcontractors and the City of Calgary have all been named in the lawsuit. Although it appears that there is an insurance company involved in defending this action, it is uncertain whether there are risks that either the insurance policy may contain an exclusion for this type of liability, or the policy limits could be inadequate.
- Progress regarding this lawsuit has been slow and more recently, SMIF's lawyers have issued a notice of ceasing to act as they are owed in excess of \$70,000.
- 1004588 has changed lawyers and its new counsel has recently negotiated a standstill on the litigation until September 2010 to allow time to complete repairs and pursue settlement discussions. SMIF has consented to this standstill agreement.
- The Receiver understands that the funds due from SMIF arise from advances spent for capital improvements to the building, which are to be repaid to Artevo over time by cash generated from lease payments after deducting mortgage payments and other SMIF non-recoverable expenses. The financial situation of SMIF is seriously impaired because:
 - Its only tenant and source of revenue, Artevo, is insolvent and has not paid rent for a number of months;
 - An order from the City of Calgary on January 19, 2010 requires structural repairs to be undertaken prior to the building being occupied or used by the public; and
 - The rent has not been paid for the last several months resulting in arrears due to SMIF calculated at as high as \$172,618.

Sale Process

8. The Invitation for Offers was emailed to all persons, or their counsel, known to be interested in the asset, including Beth Fredeen, Rosemary Marr, Christopher Talbot, Ken Carter, Kevin Kerwin, and counsel for the main defendant in the building damages claim.
9. The Invitation for Offers was posted on the Receiver's website at www.alger.ca and 24 visitors registered to examine the offer package.
10. An advertisement was placed in the Calgary Herald, legal/ tender notice section on April 21 and 28, 2010 and a copy of the ad is attached as Exhibit 2.
11. Three offers were made through this process and copies of these offers are attached as Exhibits 3, 4 and 5.
12. The Receiver has accepted the offer of 1518494 Alberta Ltd. (the "Accepted Offer"), which is for all of the assets included in the Invitation for Offers. This offer was subject to some conditions, which were removed by the offeror on May 11, 2010 and a deposit cheque for \$110,000 was provided on May 13, 2010.
13. 1518494 Alberta Ltd. is related to at least some of the investors in the subordinated secured debenture due to Olympia Trust. The Accepted Offer is for \$1,100,000 to be paid \$200,000 in cash and the balance of \$900,000 by way of credit towards the secured debt to Olympia Trust. The \$200,000 cash is sufficient to pay accrued and unpaid receivership costs to date.
14. The SMIF Shares may be subject to a unanimous shareholder agreement (the "USA") dated January 30, 2004 among SMIF, Power Play Art Ltd. (now Artevo) and Ken Carter ("Carter"). As Carter is not a shareholder of SMIF to the Receiver's knowledge, but rather Carter Management Co. Inc. is the other 50% shareholder of SMIF, the Receiver does not believe the USA creates a binding agreement between the shareholders of SMIF. For the Court's information, the USA contains the following provisions which may be relevant if the USA does constitute a binding agreement between the SMIF shareholders:
 - The SMIF Shares are subject to certain rights of first refusal (the "ROFR"), pursuant to which the Receiver provided Carter with a Selling Notice dated May 19, 2010 documenting the consideration and terms of sale contemplated as part of the Accepted Offer. The ability of Carter to purchase the SMIF Shares pursuant to the Selling Notice expires on Thursday, June 3, 2010. The USA provides that, if Carter does not exercise the ROFR before June 3, 2010, the SMIF Shares may then be sold as part of the Accepted Offer. Counsel for Carter claimed that the May 19 2010 notice did not comply with the USA. Accordingly, as a precautionary measure, a further notice was issued by the Receiver on May 28, 2010 which would expire on Saturday June 12, 2010. Copies of both notices are attached as Exhibits 6 and 7 respectively.
 - The consent of SMIF's directors, who, to the best of the Receiver's knowledge based on review of a recent corporate search report for SMIF, are Carter and Christopher Talbot, must be obtained prior to the SMIF Shares being sold

pursuant to the Accepted Offer. If such consent is not obtained, an application may be made to the Court seeking the same.

15. As Carter is one of the unsuccessful offerors for the purchase of the SMIF shares, the Receiver does not believe that it will obtain the consent required by the USA, should such consent be necessary. As a result, the Receiver will be seeking an order, to the extent the USA is applicable, that the Receiver has complied with the terms thereof in issuing the Selling Notice and will vest title to the SMIF Shares pursuant to the Accepted Offer despite consent not being obtained.

Olympia Trust Indenture

14. Olympia Trust acts as the trustee for a group of secured debenture holders who were owed a total of \$2,036,000 at the date of receivership.
15. Beth Fredeen has recently amended her statement of claim to allege that Christopher Talbot and Irene Besse, both of whom are participants in the Olympia Trust Indenture and were, according to the records of Olympia Trust at the outset of these proceedings, owed a total of \$1,411,000 regarding this debenture, have been granted security on a portion of the advances made by them which is improper and the granting of which security is a preference. A copy of this amended statement of claim is attached as Exhibit 8. According to information provided by counsel for Ms. Fredeen, the amount contested is as follows:

Irene Besse	\$260,000
Christopher Talbot	<u>165,000</u>
	<u>\$465,000</u>

16. The Receiver has obtained an independent legal opinion on the validity of the Olympia Trust security, which was attached as Exhibit 4 to the Receiver's Second Report dated February 26, 2010 and which does not address the validity of any specific debentures granted there under.
17. Pursuant to a sale of a portion of Artevo's assets approved by this Court on March 4, 2010, the indebtedness due to the debenture holders was proportionately reduced by \$875,000 as partial consideration for the purchase of those assets.
18. If the sale to 1518494 Alberta Ltd. is approved by this Court, part of the consideration paid for the SMIF assets would be a further reduction of the Olympia Trust debenture by \$900,000. That proportion of the further reduction of the indebtedness due to Christopher Talbot and Irene Besse will reduce the remaining balance due to them to approximately \$244,000 which is below the amount being challenged by Beth Fredeen by approximately \$181,000. Details of this calculation are attached as Exhibit 9.

Status of mortgage on SMIF building

19. The mortgage due of approximately \$1,405,000 was current to April 1, 2010 at which time it fell into arrears and a demand and notice of intention to enforce security ("NOI") was delivered by counsel to the mortgagee. The mortgagee, Servus Credit Union sold this mortgage to 1412544 Alberta Ltd.. The sole director is Beth Fredeen.
20. The Receiver has contacted counsel for 1412544 Alberta Ltd. to determine the status of any proceedings following the expiry of the NOI and has been informed that there are currently no foreclosure proceedings underway. However, it is likely that further steps are imminent.

Other assets

21. With the sale of the Investment in SMIF Holdings Inc., the Receiver has now realized on the bulk of Artevo's assets. However, the following assets will still provide some further realization:
 - Accounts receivable
 - Inventory at auction in Victoria
 - Miscellaneous other assets
 - Abstract Events Ltd., including customer lists and lease on SMIF premises
22. Accounts Receivable - \$52,141 - A list of outstanding accounts receivable is attached as Exhibit 10. It is estimated that the Receiver will realize between nil and \$10,000 on the collection of these accounts exclusive of \$31,308 and \$10,160 owed by Beth Fredeen and Ken Carter (SMIF 50% shareholder), respectively. Ms. Fredeen is claiming a set-off for these amounts owed against outstanding wages from Artevo. Her claim to this set-off is questionable due to the timing of the sales in close proximity to the filing of the receivership application. Mr. Carter has simply been ignoring the Receiver's demands for payment and to date no collection action has been initiated for the amounts due from him.
23. Inventory in Victoria - \$1,000 - This remaining inventory continues to be auctioned in small lots by a Victoria auctioneer under the supervision of the Receiver's Victoria agent.
24. Miscellaneous assets - \$50,000 - Artevo leased a significant number of chattels for a variety of suppliers and finance companies. Upon review it has been determined by the Receiver that in a number of cases the security and in particular the registration of the security, on these assets is deficient. Accordingly, the Receiver has challenged the security for these items and provided disallowance of the secured claims made by several suppliers and finance companies. A list of these miscellaneous assets is attached as Exhibit 11.
25. Power Play Events Ltd. (o/a Abstract Events) - This subsidiary of Artevo previously operated an events business from the same premises as leased by Artevo from SMIF. Recently, interest has been expressed to acquire the shares of this insolvent company if the lease between Artevo and SMIF could be transferred to Power Play Events Ltd.. The Receiver has had its legal counsel review this lease and is of the view that the lease could be

transferred to Power Play Events Ltd. However, it is questionable if there is any value to the lease given the rental arrears, state of the SMIF building and recent decline in lease rates. Should the Receiver receive an offer for the Power Play Events Ltd. shares it is the Receiver's intention to allow all parties the opportunity to make an offer on some form of abbreviated tender basis. A copy of Power Play Events Ltd.'s financial statements as at December 18, 2009 is attached as Exhibit 12.

Receipts and Disbursements

26. Attached as Exhibit 13 is a copy of the Receiver's Statement of Receipts and Disbursements for the period from the date of appointment to May 13, 2010, which indicates cash on hand of \$111,709. This statement has been updated from that provided with the Receiver's Second Report and now reflects:

- the sale of assets approved by the Court on March 4, 2010
- payment of the first secured claim of the RBC Financial in the amount of \$77,816.46
- GST and PST priority claims of \$8,127 have also now been calculated and paid
- payment of the Receiver's legal counsel to April 30, 2010
- payment of the Receiver's Victoria agent
- reduction of the Olympia debenture by \$875,000 for purchased assets
- further operating expenses paid
- various reclassification of expenses

Projected Realization and Anticipated Distribution

27. The Receiver has reviewed realizations to date and calculated a projected realization and distribution which is provided on the next page.

	<u>Para.</u>	<u>Low</u>	<u>High</u>
Net realization to date - per R&D attached	26	\$ 111,709	\$ 111,709
Sale of SMIF Investment to 1518494 Alberta Ltd.		1,100,000	1,100,000
Collection of accounts receivable	22	-	52,141
Victoria inventory	23		
Sale of Miscellaneous assets	24	40,000	60,000
Sale of shares in Abstract Events Ltd.	25		
		<u>1,251,709</u>	<u>1,323,850</u>
Less: Occupancy costs to pay		50,000	40,000
Receiver's fees and legal costs		325,000	300,000
		<u>375,000</u>	<u>340,000</u>
Amount available for distribution	14-18	<u>876,709</u>	<u>983,850</u>

28. It should be noted that all funds projected to be realized will currently be paid to the secured debenture holders as more fully discussed in paragraphs 14 to 18 above.

Other Matters

Credit Card Reward Points Redemption

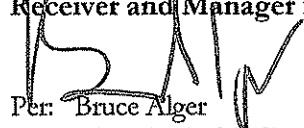
29. Artevo used credit cards for business expenses, which generated reward points that had been used for company travel and employee incentives. Based on information supplied by a former director, the Receiver is currently following up on the status of these reward points including usage of points just prior to the date of receivership, the status of remaining points and the realizable value, if any, of these reward points.

Conclusions and Recommendation

30. Based on the options available for liquidation, consideration of the offers received, and the nature of the assets offered for sale, the Receiver recommends this Honourable Court approve the offer of 1518494 Alberta Ltd.

Respectfully submitted this 2nd day of June, 2010.

**Alger & Associates Inc.,
Receiver and Manager for Artevo Corporation**


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Action No. 0901-18773

2010

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

CLERK OF THE COURT

JUN 03 2010

CALGARY, ALBERTA

BETH FREDEEN

Plaintiff

-and-

**ARTEVO CORPORATION, IRENE
BESSE and CHRISTOPHER TALBOT**

Defendants

**RECEIVER'S FOURTH REPORT
SALE OF ASSETS
ALGER & ASSOCIATES INC.
June 2, 2010**

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