



No. S086670  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF

*TRUSTEE ACT*, R.S.B.C. 1996, C. 464, AS AMENDED

AND

*LAW AND EQUITY ACT*,  
R.S.B.C. 1996, CHAPTER 253, AS AMENDED

AND

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

**ORDER**

BEFORE THE HONOURABLE ) THURSDAY, THE 9TH DAY  
 )  
MR. JUSTICE COLE ) OF OCTOBER 2008.  
 )

THE APPLICATION of the Elite FX Management Inc., in its capacity as General Partner of Elite FX Limited Partnership, for an Order pursuant to s. 97 of the *Trustee Act*, R.S.B.C. 1996, c. 464, as amended (the "*Trustee Act*"), and s. 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "*LEA*") to appoint Boale Wood & Company Ltd. as Judicial Trustee and Receiver, without security, of all of the assets, undertakings and properties of ELITE FX LIMITED PARTNERSHIP, ELITE FX MANAGEMENT INC., ELITE FX INVESTMENTS INC., ELITE FX TRADING INC. (collectively, "Elite FX") coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Petition to the Court dated September 19, 2008, Affidavit #1 of James D. Roland sworn September 19, 2008 and Affidavit #1 of Michelle Watts, sworn September 19, 2008; AND ON HEARING Roselle Wu, Counsel for the Petitioners, and no one appearing for David Morrison and Cognoscente Consulting Limited, and the British Columbia Securities Commission, although duly served, and on reading the consent of Boale, Wood & Company Ltd. to act as the Judicial Trustee and Receiver.

## APPOINTMENT

1. THIS COURT ORDERS that pursuant to s. 97 of the *Trustee Act* and s. 39 of the *LEA*, Boale Wood & Company Ltd. is hereby appointed:

- (a) Judicial Trustee, without security, of all assets, undertakings and property held by Elite FX, and each of them, in trust for the limited partners of Elite FX Limited Partnership (the "Trust Property");
- (b) Receiver, without security, of all current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of Elite FX, and each of them (the "Non-Trust Property");

(the "Trust Property" and the "Non-Trust Property" are herein referred to collectively as the "Property").

(Boale Wood & Company Ltd., in its capacity as Judicial Trustee and Receiver of Elite FX and the Property, is herein referred to as the "Judicial Trustee")

## JUDICIAL TRUSTEE'S POWERS

2. THIS COURT ORDERS that the Judicial Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Judicial Trustee is hereby expressly empowered and authorized to do any of the following where the Judicial Trustee considers it necessary or desirable:

- (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, changing of locks and security codes, relocating of Property to safeguard it, engaging of independent security personnel, the taking of physical inventories and placement of such insurance coverage as may be necessary or desirable;
- (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (d) receive and collect all monies and accounts now owed or hereafter owing to Elite FX and to exercise all remedies of Elite FX in collecting such monies, including, without limitation, to enforce any security held by Elite FX;
- (e) settle, extend or compromise any indebtedness owing to or by Elite FX;

- (f) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Judicial Trustee's name or in the name and on behalf of Elite FX, for any purpose pursuant to this Order;
- (g) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Elite FX, the Property or the Judicial Trustee, 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, provided that nothing in this Order shall authorize the Judicial Trustee to defend or settle the action(s) in which this Order is made unless otherwise directed by this Court;
- (h) report to, meet with and discuss with such affected Persons (as defined below) as the Judicial Trustee deems appropriate on all matters relating to the Property and the this Order, and to share information with such Persons, subject to such terms as to confidentiality as the Judicial Trustee deems advisable;
- (i) exercise any shareholder, partnership, joint venture or other rights which Elite FX may have; and
- (j) take any steps reasonably incidental to the exercise of these powers,

and in each case where the Judicial Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Elite FX, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE JUDICIAL TRUSTEE**

3. THIS COURT ORDERS that (i) Elite FX, (ii) all of Elite FX's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Judicial Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to such Property to the Judicial Trustee, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Judicial Trustee upon the Judicial Trustee's request.
4. THIS COURT ORDERS that all Persons shall forthwith advise the Judicial Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Elite FX, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Judicial Trustee or permit the Judicial Trustee to make, retain and take away copies thereof and grant to the Judicial Trustee unfettered access to and use of accounting, computer,

software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Judicial Trustee due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to Judicial Trustee for the purpose of allowing the Judicial Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Judicial Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Judicial Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Judicial Trustee with all such assistance in gaining immediate access to the information in the Records as the Judicial Trustee may in its discretion require including, without limitation, providing the Judicial Trustee with instructions on the use of any computer or other system and providing the Judicial Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE JUDICIAL TRUSTEE**

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Judicial Trustee except with the written consent of the Judicial Trustee or with leave of this Court.

#### **NO PROCEEDINGS AGAINST ELITE FX OR THE PROPERTY**

7. THIS COURT ORDERS that no Proceeding against or in respect of Elite FX or the Property shall be commenced or continued except with the written consent of the Judicial Trustee or with leave of this Court and any and all Proceedings currently under way against or in respect of Elite FX or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

8. THIS COURT ORDERS that all rights and remedies (including, without limitation, set-off rights) against Elite FX, the Judicial Trustee, or affecting the Property, are hereby stayed and suspended except with the written consent of the Judicial Trustee or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Judicial Trustee or Elite FX to carry on any business which Elite FX is not lawfully entitled to

carry on, (ii) exempt the Judicial Trustee or Elite FX from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE JUDICIAL TRUSTEE**

9. THIS COURT ORDERS that 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 Elite FX, without written consent of the Judicial Trustee or leave of this Court.

#### **CONTINUATION OF SERVICES**

10. THIS COURT ORDERS that all Persons having oral or written agreements with Elite FX or statutory or regulatory mandates 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 of any kind to Elite FX 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 the Judicial Trustee, and that the Judicial Trustee shall be entitled to the continued use of Elite FX's current 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 date of this Order are paid by the Judicial Trustee as may be agreed upon by the supplier or service provider and the Judicial Trustee, or as may be ordered by this Court.

#### **JUDICIAL TRUSTEE TO HOLD FUNDS**

11. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Judicial Trustee from and after the making of this Order from any source whatsoever including, without limitation, the sale or disposition of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Judicial Trustee (the "Post-Judicial Trusteeship Accounts") and the monies standing to the credit of Post-Judicial Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Judicial Trustee to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

12. THIS COURT ORDERS that, subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of Elite FX shall remain the employees of Elite FX until such time as the Judicial Trustee, on Elite FX's behalf, may terminate the employment of such employees. The Judicial Trustee shall be liable for any employee-related liabilities, including wages, severance pay, termination pay,

vacation pay, and pension or benefit amounts relating to any employees that the Judicial Trustee may hire.

13. THIS COURT ORDERS that pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Judicial Trustee may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales or dispositions of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete the Sale, shall return all such information to the Judicial Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Elite FX, and shall return all other personal information to the Judicial Trustee, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

14. THIS COURT ORDERS that nothing in this Order shall require the Judicial Trustee 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 relating to 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*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Judicial Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Judicial Trustee shall not, as a result of this Order or anything done in pursuance of the Judicial Trustee's duties and powers under this Order, be construed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Judicial Trustee is actually in Possession.

#### **LIMITATION ON THE JUDICIAL TRUSTEE'S LIABILITY**

15. THIS COURT ORDER that the Judicial Trustee shall incur no personal 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 protections afforded the Judicial Trustee by Section 14.06 of the BIA or by any other applicable legislation.

## **JUDICIAL TRUSTEE'S ACCOUNTS**

16. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Judicial Trustee, including the fees of the Judicial Trustee and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Judicial Trustee and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Judicial Trustee's Charge").
17. THIS COURT ORDERS that the Judicial Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Judicial Trustee and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
18. THIS COURT ORDERS that prior to the passing of its accounts, the Judicial Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Judicial Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **ALLOCATION**

19. THIS COURT ORDERS that any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Judicial Trustee's Charge amongst the various assets comprising the Property.

## **GENERAL**

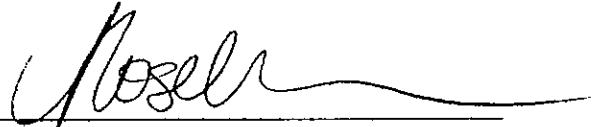
20. THIS COURT ORDERS that the Judicial Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
21. THIS COURT ORDERS that nothing in this Order shall prevent the Judicial Trustee from acting as a trustee in bankruptcy of Elite FX.
22. THIS COURT REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Judicial Trustee and its agents in carrying out the terms of this Order.
23. THIS COURT ORDERS that the Judicial Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and all such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Judicial Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Judicial Trustee and its agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than two (2) clear business days' notice to the Judicial Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

BY THE COURT

  
DISTRICT REGISTRAR

APPROVED BY:

  
\_\_\_\_\_  
Counsel for the Petitioner  
Harper Grey LLP  
(per Roselle P. Wu)



No. \_\_\_\_\_  
Vancouver Registry

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

  
West Coast

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9/10 JUDICIAL TRUSTEESHIP ORDER

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LEANNE

HANNAH GREY

