Court File No. CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

HALEX CAPITAL INC.

Applicant

and

NATURAL ENERGY SYSTEMS INC.

Respondent

and

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT,* R.S.O. 1990, C. C. 43, AS AMENDED

MOTION RECORD
OF THE MOVING PARTY, DOUGLAS HALLETT

November 18, 2020

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TAB 1

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NOTICE OF MOTION

THE RESPONDENT Douglas Hallett will make a motion to the court on December 3, 2020, at 11:00 a.m. or as soon thereafter as the motion can be heard, at the court house, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

___ in writing under subrule 37.12.1(1) because it is (on consent, unopposed or made without notice);

___ in writing as an opposed motion under subrule 37.12.1(4);

X orally.

1. THE MOTION IS FOR:

(a) An Order staying the within application by Halex Capital Inc. to appoint a receiver and referring the issues raised to arbitration, in accordance with the Unanimous Shareholders' Agreement between Douglas Hallett (hereinafter referred to as "Hallett"), Craig McEwen, G. Paul Greenwood and Natural Energy Systems Inc. (hereinafter referred to as "NES") dated November 12, 2008 (hereinafter referred to as "the Unanimous Shareholders Agreement").

(b) An Order awarding the moving party his costs of this motion on a complete indemnity basis.

(c) Such further and other relief as counsel for the moving party may advise and this Honourable Court may deem just.

2. THE GROUNDS FOR THE MOTION ARE:

(a) The within application arises from the same events and concerns what is, in pith and substance, a shareholders' dispute and which is the subject of related and on-going litigation.

(b) Hallett founded NES, which was incorporated on November 12, 2008. The principal asset of NES is, and always has been, certain intellectual property that Hallett developed with Craig McEwen. Craig McEwen is now deceased.

(c) There is no dispute that on November 12, 2008, the principals of NES executed the Unanimous Shareholders Agreement, being Hallett, Craig McEwen and G. Paul Greenwood.

(d) Article 11.3 of the Unanimous Shareholders Agreement states, in effect, that in the event its terms conflict with the Articles of Incorporation, by-laws or resolutions of the Corporation,

the terms of the Unanimous Shareholders Agreement shall govern and supersede the Articles of Incorporation, by-laws or resolutions of the Corporation.

(e) Article 11.8 of the Unanimous Shareholders Agreement is an entire agreement clause.

(f) Article 11.9 of the Unanimous Shareholders Agreement provides that any waiver of its provisions must be confirmed in writing.

(g) Article 10 of the Unanimous Shareholders Agreement is entitled "Dispute Resolution." Article 10.1 is a broadly-worded arbitration clause ("the arbitration clause") which requires that all disputes and questions whatsoever which shall arise be referred to arbitration:

> All disputes and questions whatsoever which shall arise between any of the parties in connection with this Agreement, or the construction or application thereof or any Section or thing contained in this Agreement or as to any act, deed or omission of any party or as to any other matter in any way relating to this Agreement, shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be appointed by agreement between the parties or, in default of such agreement, such arbitrator shall be appointed by a Judge of the Superior Court of Justice sitting in Toronto, upon the application of any of the parties and such judge shall be entitled to act as such arbitrator, if he or she so desires. Unless otherwise agreed to by the parties, the arbitration shall be held in the City of Toronto. The procedure to be followed shall be agreed to by the parties or, in default of such agreement, determined by the arbitrator. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by any party in respect of a procedural order made by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

(h) Section 7 of the *Arbitration Act, 1991*, SO 1991, c 17 states that "If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration

under the agreement, the court in which the proceeding is commenced *shall*, on the motion of another party to the arbitration agreement, stay the proceeding" (emphasis added).

(i) To the extent there has been any delay in bringing this motion, the said delay was caused by or contributed to by the applicant and NES. In any event, this delay was not undue, and no prejudice has been occasioned by this delay.

(j) The subject matter of the parties' dispute falls squarely within the ambit of the arbitration agreement, which is extremely broad in scope.

(k) In the alternative, it is at least arguable that this dispute falls within the arbitration agreement, and this finding is sufficient to trigger the enforcement of the arbitration agreement.

(l) There is seemingly no dispute that the arbitration agreement is valid—the applicant and NES have pleaded and relied upon it.

(m) NES repeatedly refused requests to remit the related litigation dispute to arbitration until December 19, 2019, when NES finally relented.

(n) Dr. Hallett discovered, in January 2020, that NES had purported to grant the GSA to Dr. Matovic (Halex) without the moving party's approval. The GSA granted to Halex is the same security interest that Halex now seeks to enforce.

(o) The validity of the Halex GSA is a matter which is squarely before the arbitrator.

(p) In the context of the ongoing arbitration, the moving party has pleaded entitlement to an accounting of debts properly owed to him and has alleged that his shareholder rights have been improperly suspended and that the board of NES is improperly constituted. In summary,

it is the moving party's position that the NES board did not have the authority to issue security to Halex in the first place.

(q) A date for arbitration of the issues in the related proceedings was tentatively scheduled to take place, September 8 to September 11, 2020. The hearing did not proceed, however, because the applicant's then counsel advised that it intended to pursue receivership.

(r) After years of litigation with NES, and as the arbitration date was drawing near, the person who appears to be funding and spearheading the litigation against the moving party is now pursuing a receivership through his own private holding company.

(s) Dr. Matovic (Halex) voluntarily agreed to participate in arbitration as a director of NES. Dr. Matovic is the chairman and CEO of Halex and the chairman and CEO of NES. It is the position of the moving party that Dr. Matovic/Halex is in an irreconcilable conflict of interest.

(t) Based on the timing of the loans made by Halex to NES, secured by Halex's purported GSA, it is the position of the moving party that the loans were made to fund the NES litigation against Hallet.

(u) The Halex GSA was deliberately structured to fail. While the principal of Halex was involved in setting up the arbitration schedule, he was at the same time signing off on promissory notes payable on June 30, 2020, including a final advance of $25,000 on June 26, 2020 due to be paid only four days later.

(v) Contractual language calling for the arbitration of disputes "relating to" an agreement has been generously interpreted to enjoy "a wide compass", an interpretation "consistent with the

legislative policy...which favours arbitration over litigation where the parties so provide by agreement."

(w) To the extent that this Honourable Court may find that one or more issues fall outside the ambit of the arbitration clause, the discretionary exception under section 7(5) of the *Arbitration Act, 1991* would not be triggered, because it would be unreasonable to separate the matters dealt with in the arbitration clause from the other matters in dispute.

(x) To the extent that there is any dispute about the jurisdiction of the arbitrator, that dispute must be resolved first by the arbitrator, consistent with the "competence-competence principle."

(y) The relief being requested is necessary in order to secure the just, most expeditious and least expensive determination of these proceedings on their merits, and in accordance with the parties' intentions and agreement as set out in the Unanimous Shareholders Agreement.

(z) The *Arbitration Act, 1991*, SO 1991, c 17, generally, including sections 7 and 17(1) thereto.

(aa) Rules 1.04, 2.01, 2.03, 3.02, 21, 25.06, 39, 53, 57 and 76 of the *Rules of Civil Procedure*, as amended; and

(bb) Such further and other grounds as counsel may advise and this Honourable Court will consider.

3. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) Affidavit of Douglas Hallett, sworn November 6, 2020, together with exhibits;

(b) The Supplementary Affidavit of Douglas Hallett, sworn November 18, 2020, together with exhibits;

(c) Transcripts of cross-examinations (to be provided);

(d) Such further and other material as counsel may advise and this Honourable Court will consider.

DATE: November 18, 2020

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Lawyers for the Proposed Receiver

HALEX CAPITAL INC.
APPLICANT

-and-

NATURAL ENERGY SYSTEMS INC.
RESPONDENT

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

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DOUGLAS J. HALLETT

I, Douglas J. Hallett, of the City of Kingston, in the County of Frontenac, MAKE OATH AND SAY:

1. I am the founder and principal shareholder of Natural Energy Systems Inc. ("NES"), the respondent in this proceeding. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe that information to be true.

2. I intend to bring a motion to stay the within application on the basis that the matters at issue in this application are properly the subject of an ongoing arbitration or, in the alternative, to stay the within application until such time as certain underlying factual and legal issues giving rise to this application, which are properly the subject of the ongoing arbitration, are resolved by the arbitrator.

3. As I will explain further below, I require an adjournment of the hearing of this application. I would like to set a reasonable timetable with the other parties, so that my motion materials can be served, cross-examinations can be held, and my motion can be heard.

Background

4. I founded and incorporated NES, as a vehicle to commercialize the unique waste-to-energy technology that I co-invented with my friend Craig McEwen, now deceased. The technology cost me a considerable sum to develop. I transferred this technology to NES and, since that time, the technology has been NES's principal asset.

Unanimous Shareholders Agreement

5. In 2008, a Unanimous Shareholders Agreement ("USA") was signed by the shareholders of NES. This USA is affixed to Mr. Matovic's affidavit sworn October 5, 2020 as Exhibit "I". Mr. Matovic appears to acknowledge at paragraph 20 of his affidavit that the affairs of NES are governed by this USA. I believe that Halex and/or Mr. Matovic are shareholders of NES, though an up-to-date share register has been withheld from me.

6. The USA makes clear that I enjoy special status: I am to be the company's chairman and principal shareholder, am entitled to elect the board's majority, and have a casting vote. No shareholder is permitted to vote his shares against me. NES is thus, by agreement, to be effectively controlled by me.

7. It was always understood, by all involved, that I would remain a director and shareholder of NES, and thereby profit from the invention that I developed and transferred to the company.

Arbitration Clause

8. The USA contains, at Article 10, a "DISPUTE RESOLUTION" clause, which requires that "all disputes and questions whatsoever" related to the construction or application of the USA shall be referred to arbitration. For ease of reference, this clause is reproduced in full below:

ARTICLE 10
DISPUTE RESOLUTION

10.1 **Dispute Resolution.**

All disputes and questions whatsoever which shall arise between any of the parties in connection with this Agreement, or the construction or application thereof or any Section or thing contained in this Agreement or as to any act, deed or omission of any party or as to any other matter in any way relating to this Agreement, shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be appointed by agreement between the parties or, in default of such agreement, such arbitrator shall be appointed by a Judge of the Superior Court of Justice sitting in Toronto, upon the application of any of the parties and such judge shall be entitled to act as such arbitrator, if he or she so desires. Unless otherwise agreed to by the parties, the arbitration shall be held in the City of Toronto. The procedure to be followed shall be agreed to by the parties or, in default of such agreement, determined by the arbitrator. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). The arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by any party in respect of any procedural order made by the arbitrator. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

My GSA

9. On March 15, 2014, NES granted two GSAs—one to me and one to Mr. McEwen—giving each of us security over the corporation's assets (i.e. the technology and patents). These GSAs were authorized by me, and drafted and registered by, and on the advice of, NES's corporate lawyer.

My Removal from the NES Board

10. In March 9, 2015, I was purportedly removed from the NES board, contrary to the USA which, again, gives me the right to elect the majority. Shares were voted against me, contrary to the expressed terms of the USA.

11. I have disputed, and continue to dispute, my removal from the board. I maintain that the board is improperly constituted, contrary to the USA. This matter is presently the subject of an ongoing arbitration, as described below.

12. The board of NES has since purported to "suspend" my shareholder rights. I have disputed, and continue to dispute, the basis of this suspension. This too is a matter presently being litigated in the ongoing arbitration.

Litigation Commenced by NES

13. Notwithstanding the dispute resolution clause in the USA, above, which requires that the parties arbitrate their disputes, NES commenced a court action against me by way of Notice of Action dated February 28, 2017.

14. I believe Mr. Matovic was a director and controlling mind of NES when that litigation was commenced, and throughout the events described below.

15. In its Statement of Claim dated March 30, 2017, NES claimed I misappropriated funds, and sought, among other things, an order cancelling all securities issued by NES to me, including my shares in NES and the GSA in my favour dated March 17, 2014. The Statement of Claim was replete with allegations touching and concerning the USA.

16. In or about August 2017, NES moved for—and obtained—partial default judgment, solely in relation to its claim for misappropriated funds. NES sought no relief whatsoever in relation to my GSA. It brought this motion without notice to me, even though I was self-represented at the time.

17. On or about February 15, 2018, I moved to set aside the partial default judgment, and for an order that the NES action be stayed and referred to arbitration.

18. In an endorsement dated February 26, 2019, the Court set aside the partial default judgment against me, granted leave for me to deliver a statement of defence and counterclaim, dismissed my motion that the NES action be stayed and referred to arbitration without substantive determination and without prejudice to me seeking this relief "after the close of pleadings," and ordered NES to pay me $12,000.00 in costs.

19. I served my Statement of Defence and Counterclaim in the NES action on March 27, 2019.

20. In the months that followed, my lawyers made repeated requests to NES for payment of the $12,000.00 costs order and that the action be referred to arbitration in accordance with the USA.

21. NES paid the costs order on or about July 22, 2019.

22. On September 19, 2019, NES advised that it intended to deliver a Reply and Defence to Counterclaim in the NES action.

23. On November 5, 2019, NES delivered a Statement of Defence to Counterclaim.

24. No discovery plan was agreed to in the NES action. No affidavits of documents were exchanged. No examinations for discovery were ever scheduled. No expert evidence was exchanged. None of the issues in that action was ever determined.

25. NES repeatedly refused my requests to remit its matter to arbitration until on or about December 19, 2019 when it finally relented.

26. The NES action and my counterclaim in that action have each been referred to arbitration, as has a companion action. An arbitrator has been appointed.

27. Without purporting to waive solicitor-client privilege, my lawyers have advised me not to disclose too many specifics regarding the ongoing arbitration without first seeking some guidance from the arbitrator on what can, and cannot, be disclosed to the Court.

28. Having said that, Mr. Matovic has himself disclosed some details regarding the ongoing arbitration in his affidavit; details which he only learned through his involvement as a director of NES.

29. Nevertheless, I think it is critical for the Court to understand the scope of that arbitration. To that end, I will say that the parties have effectively adopted their court pleadings as their pleadings in the arbitration. The parties subsequently amended these pleadings during the arbitration. My pleadings were amended, in part, because I discovered, in January 2020, that NES had purported to grant a GSA to Mr. Matovic (Halex) without my approval. This is the very GSA that Halex now seeks to enforce. The validity of Halex's GSA is matter which is squarely before the arbitrator, as seemingly acknowledged by Mr. Matovic at paragraphs 23 and 25 of his affidavit.

30. As part of the ongoing arbitration, I have also pleaded entitlement to an accounting of the debts properly owed to me. I have also alleged that my shareholder rights have been improperly suspended and that the board of NES is improperly constituted. In short, I argue that the NES board did not have the authority to issue security to Halex in the first place.

31. I also feel compelled to advise the Court that the arbitration was tentatively scheduled for a final hearing on September 8 to 11, 2020. The hearing did not proceed, however. In mid-July my lawyers received word from Halex's then counsel (Mr. Jeffrey Levine at McMillan LLP) that it intended to pursue this receivership. This development has, unfortunately, brought the arbitration to a screeching halt.

32. The applicant had previously been represented by the law firm McMillan LLP. I am advised by my counsel, Kurt Pearson, and do verily believe that Dr. Matovic and his counsel, Jeff Levine of McMillan LLP participated in a conference call with the arbitrator,

Colin Campbell, on July 30, 2020 to discuss, among other issues, scheduling and the receivership issue.

33. I will say, in fairness, that the hearing may have needed to be adjourned in any event, as one of my lawyers later underwent surgery at the end of July. I do not expect that the matter would have been adjourned for more than two or three months, but I cannot say for sure, as much would have depended on the arbitrator's schedule. NES's counsel was agreeable to an adjournment in these circumstances.

34. It appeared to me that Mr. Matovic was an active participant in the arbitration and, outwardly at least, was the one who was principally instructing NES's lawyer in that proceeding.

35. And so, after years of litigation with NES, and as a final hearing date was drawing near, the very person who was seemingly funding and spearheading the litigation against me—Mr. Matovic—is now pursuing a receivership through his own private holding company. He is doing so based on a GSA which is being disputed in the very arbitration which Mr. Matovic voluntarily agreed to participate in as a director of NES. I believe that Mr. Matovic is now attempting to subvert the arbitration process with this application.

36. I estimate that I have spent in excess of $100,000.00 in my legal fight against NES, the company I founded. I believe that, with this application, Mr. Matovic is trying to use his greater financial wherewithal to pull the rug out from underneath me. The difference in our financial positions cannot be understated. For example, it was not lost on me that Halex has four lawyers of record in this proceeding.

37. From what I can tell, in recent years Mr. Matovic's control and influence over NES has grown. I suspect this is because he has, apparently, been supporting NES using funds from his private holding company Halex.

38. At paragraphs 8, 9 and 10 of the Matovic affidavit, Mr. Matovic describes how his company made certain loans to NES, which were secured by his (Halex's) purported GSA. Based on the timing of those loans, I believe they were made, at least in part, to fund NES's litigation against me. It is important to note that Halex is the company that owns Mr. Matovic's shares in NES.

39. It appears to me that the Halex GSA was destined and deliberately structured to fail. While Dr. Matovic was involved in setting up the arbitration schedule, he was, at the same time, signing off on promissory notes payable on June 30, 2020, including a final advance of $25,000 on June 26, 2020 which appears to have been due to be paid only four days later.

40. NES, Halex and Mr. Matovic knew that I was actively disputing my exile as shareholder and director of NES through the litigation process, on the basis that my exile was contrary to the USA. They, nevertheless, appear to have authorized certain loans by Mr. Matovic (Halex) for purposes of funding the litigation against me, and gave security to Mr. Matovic (Halex) which, I'm sure they knew, I never would have approved.

41. I have reviewed the corporate resolution of NES dated January 30, 2020, which purportedly authorized Halex's GSA. That resolution, which is excerpted below, appears to confirm that Halex's loans were secured because Article 4.2(c) of the GSA requires that shareholder loans be secured:

Natural Energy Systems Inc.

Resolution of the Board of Directors

Date: January 30, 2020.

On the matter of granting a registered security for a shareholder loan(s) from HALEX CAPTIAL INC., ("Halex") to NATURAL ENERGY SYSTEMS INC., ("NES").

RECITALS:

WHEREAS NES has received a number of shareholder loans from Halex that have been approved by the NES Board of Directors;

AND WHEREAS NES has provided a consolidated Promissory Note to Halex in the amount of C$175,000.00, dated January 31, 2020;

AND WHEREAS the NES Universal Shareholders' Agreement effective November 12, 2008 clearly states under ARTICLE 4.2 (c) "each loan share be secured;".

42. The loans would thus appear to touch and concern the USA, and, I therefore believe, properly the subject of the ongoing arbitration.

43. Similarly, at paragraph 18 of his affidavit, Mr. Matovic states the following (with "DJH" being me, Douglas J. Hallett):

> 18. Notwithstanding that DJH appears to have a registered security interest, which ranks in priority to Halex, there are legal and factual issues which render the DJH security invalid and/or significantly diminish the quantum of amounts purportedly secured by the DJH GSA (as defined below).

44. The "legal and factual issues" described by Mr. Matovic are disputed matters which have already been referred to arbitration. In my opinion, there is simply no way to separate the issues in this application from the issues in the arbitration.

45. Mr. Matovic states in his affidavit that Halex is not a party to the arbitration. While that may be true, given that Halex and Mr. Matovic are, effectively, one in the same, and that Mr. Matovic has been intimately involved with the ongoing arbitration, I believe that Halex has always known that the matters raised in the within application are properly the subject of the ongoing arbitration the parties already agreed to.

46. I believe that Mr. Matovic was instructing NES's counsel throughout the litigation and arbitration. For Mr. Matovic to now seek to distance himself from that process by arguing that his holding company is not a party to the arbitration is disingenuous.

47. I believe this application by Halex is nothing more than a continuation of the shareholder dispute which has been ongoing since 2015 and has already been remitted to arbitration.

Request for Adjournment

48. I was advised by my counsel and do verily believe that Mr. Pearson received notice on August 24, 2020 that Bennett Jones LLP had been retained by Halex Capital/Dragan Matovic regarding matters related to NES. Attached as **Exhibit "A"** to my affidavit is a true copy of an email from Mr. Shakra of Bennett Jones to Mr. Pearson dated August 24, 2020.

49. Attached as **Exhibit "B"** to my affidavit is true copy of Mr. Pearson's response dated August 25, 2020.

50. Mr. Shakra confirmed to Mr. Pearson that Bennett Jones was in the process of reviewing the file in seeking instructions as to schedules for responding materials, cross examinations etc. with the October 5 date in mind.

51. I am advised by Mr. Pearson and do verily believe that he did not receive further word from counsel at Bennett Jones since he exchanged emails with Mr. Shakra on September 2, 2020 until this application was served. Attached as **Exhibit "C"** is a true copy of the emails exchanged on September 2, redacted with respect to a portion touching upon without prejudice matters.

52. I have had some recent difficulties with my retainer arrangements due in part to the significant resources that were allocated to the arbitration process. In fact, in accordance with the agreement of the parties to the arbitration, I had posted a total of $22,600.00 with the arbitrator in anticipation of the hearing that was tentatively going to be proceeding, the parties thought, in mid-September 2020.

53. This accounts for my unfortunate delay in responding formally to this application and I apologize to the Court. I expect to be in a position to complete my retainer arrangements very shortly and, at that point, I plan to immediately proceed with the motion to stay the receivership.

54. I am advised by my lawyers that they advised Halex's lawyers of my intention to stay this application in favour of arbitration. I am further advised that on November 4, 2020 they requested an adjournment of the hearing scheduled for November 9, 2020 in favour of a consent timetable. I am advised, again by my lawyers, that this request was refused.

55. If this application were decided on November 9, 2020, the prejudice to my interests would be extreme and irreparable. It would effectively terminate my contractual right to arbitration and render the arbitrator we have appointed (and paid) functus. In the result, Mr. Matovic will have succeeded in doing an "end-run" around the very arbitration process which he already authorized NES to participate in.

56. At the same time, there is no apparent urgency to Halex's application. My GSA was granted in 2014. The litigation of this shareholders' dispute was commenced by NES back in 2017. NES failed to take any steps to move that litigation along after the default judgment was set aside, and it resisted arbitration until December 2019. In this context, it is difficult for me to see why this application must be decided on November 9, 2020.

57. I make this affidavit in support of a stay of the within application and to explain the reason why I am seeking an adjournment of this hearing for no other or improper purpose.

SWORN BEFORE ME at the City of Kingston, in the County of Frontenac on this 6th day of November, 2020

Commissioner for Taking Affidavits
(or as may be)

Douglas J. Hallett

TAB A

THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF
DOUG HALLETT
SWORN THIS 6TH DAY
OF NOVEMBER, 2020

A COMMISSIONER, ETC.

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, August 24, 2020 5:54 PM
To: Kurt Pearson <kpearson@cswan.com>
Cc: Mark Laugesen <LaugesenM@bennettjones.com>
Subject: NES

Kurt:

Bennett Jones has been retained by Halex Capital / Dragan Matovic regarding matters related to NES.

Please ensure that my colleague Mark Laugesen and I are copied on all correspondence to Halex Capital and Dragan Matovic in respect of matters related to NES.

Best,

Mike

Mike Shakra
***Associate,* Bennett Jones LLP**

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 6236 | F. 416 863 1716 | M. 647 262 7741
E. shakram@bennettjones.com
BennettJones.com

TAB B

THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF
DOUG HALLETT
SWORN THIS 6TH DAY
OF NOVEMBER, 2020

A COMMISSIONER, ETC.

Kristi Murphy

From: Kurt Pearson
Sent: Tuesday, August 25, 2020 9:22 AM
To: Mike Shakra
Cc: Mark Laugesen; Kristi Murphy
Subject: RE: NES

Thanks Mike,

We had been expecting service of application materials from Jeff Levine by approximately the end of this week concerning appointment of a receiver. We had also been tentatively holding October 5 as a return date for the hearing and were to be agreeing on a schedule for responding materials, cross-exams etc with that Oct 5 date in mind.

We had released arbitration dates to focus on this receivership issue.

Is your client intending to proceed with these steps?

Regards,
kurt

Kurt Pearson
Partner
Cunningham, Swan, Carty, Little & Bonham LLP
T 613.544.0211 ext. 8072
F 613.542.9814

Visit our website at www.cswan.com

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Monday, August 24, 2020 5:54 PM
To: Kurt Pearson <kpearson@cswan.com>
Cc: Mark Laugesen <LaugesenM@bennettjones.com>
Subject: NES

Kurt:

Bennett Jones has been retained by Halex Capital / Dragan Matovic regarding matters related to NES.

Please ensure that my colleague Mark Laugesen and I are copied on all correspondence to Halex Capital and Dragan Matovic in respect of matters related to NES.

Best,

Mike

Mike Shakra
***Associate,* Bennett Jones LLP**

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TAB C

THIS IS EXHIBIT "C" TO
THE AFFIDAVIT OF
DOUG HALLETT
SWORN THIS 6TH DAY
OF NOVEMBER, 2020

A COMMISSIONER, ETC.

Kristi Murphy

From: Kurt Pearson
Sent: Wednesday, September 2, 2020 2:54 PM
To: Mike Shakra
Cc: Mark Laugesen; Kristi Murphy
Subject: RE: NES

Mike,

I will forward your email below for instructions but I am not optimistic that my client is interested in a further conference.

I am also not confident that we can keep the Oct 5 date and commit to reasonable turn around time for responding materials, cross-exams and facta. Obviously, that may depend on when we receive your materials.

Regards,
kurt

Kurt Pearson
Partner
Cunningham, Swan, Carty, Little & Bonham LLP
T 613.544.0211 ext. 8072
F 613.542.9814

Visit our website at www.cswan.com

From: Mike Shakra <ShakraM@bennettjones.com>
Sent: Wednesday, September 2, 2020 2:21 PM
To: Kurt Pearson <kpearson@cswan.com>
Cc: Mark Laugesen <LaugesenM@bennettjones.com>; Kristi Murphy <kmurphy@cswan.com>
Subject: RE: NES

Kurt:

We are in the process of putting together receivership materials on behalf of Halex Capital.

[redacted]

With respect to the proposed receivership, can you please confirm whether the hearing date of October 5 still works for you and if necessary, what dates you and Mr. Hallett might be available on for cross examinations later this month?

Best,

Mike

Mike Shakra
***Associate,* Bennett Jones LLP**

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T. 416 777 6236 | F. 416 863 1716 | M. 647 262 7741
E. shakram@bennettjones.com
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HALEX CAPITAL INC.
APPLICANT

-and-

NATURAL ENERGY SYSTEMS INC.
RESPONDENT

Court File No. CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT

CUNNINGHAM, SWAN, CARTY, LITTLE & BONHAM LLP
Barristers & Solicitors
Suite 300 - 27 Princess Street
Kingston, ON K7L 1A3
Tel: 613-544-0211
Fax: 613-542-9814

KURT R. PEARSON
kpearson@cswan.com

Agent for Douglas J. Hallett

TAB 3

Court File No. CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

HALEX CAPITAL INC.

Applicant

and

NATURAL ENERGY SYSTEMS INC.

Respondent

and

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT,* R.S.O. 1990, C. C. 43, AS AMENDED

SUPPLEMENTARY AFFIDAVIT OF DOUGLAS J. HALLETT
(Sworn November 18, 2020)

I, Douglas J. Hallett, of the City of Kingston, in the County of Frontenac, MAKE OATH AND SAY:

1. I am the founder and principal shareholder of Natural Energy Systems Inc. ("NES"), the respondent in this proceeding. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe that information to be true.

2. I swear this affidavit further to my previous affidavit sworn November 6, 2020.

THE ARBITRATION

3. Affixed to my affidavit as **Exhibit "A"** is a copy of the executed Arbitration Agreement dated January 28, 2020, confirming that NES agreed to arbitrate its dispute with me.

4. Affixed to my affidavit as **Exhibit "B"** is a copy of my Amended Statement of Defence and Counterclaim dated March 6, 2020. On consent of the parties, this was adopted as my pleading for purposes of the ongoing arbitration. Accordingly, this pleading helps explain the scope of the arbitration.

5. Mr. Matovic was an active participant in the arbitration on behalf of NES. He is, I believe, the ostensible Chairman and CEO of NES. I am advised by my lawyers, and do believe, that Mr. Matovic was described by NES's counsel, Mr. Camelino, as the representative of the NES board for purposes of the arbitration.

6. There were several conference calls with the arbitrator over time, most if not all of which, my lawyers advise, Mr. Matovic attended in his capacity as a director and officer of NES. At no time was it ever suggested that Mr. Matovic was somehow attending these calls as a mere creditor of NES.

7. I am advised by my lawyers that conference calls took place on or about: February 12, 2020, February 27, 2020, March 12, 2020, March 25, 2020, April 13, 2020, June 2, 2020, June 19, 2020, July 28, 2020 and July 30, 2020.

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FINANCIAL AND CORPORATE RECORDS

8. Over several years I have made multiple requests for relevant corporate and financial records from NES, both before and during the arbitration. I have been told, at various times over these years, that financial records were being prepared by an accountant, and, alternatively, that few records exist because I allegedly destroyed them. I believe that NES is actively withholding the information that is needed to assess the value of my interest in the company.

NES AND MATOVIC ARE NOT AT ARMS-LENGTH

9. I tend to believe that Mr. Matovic loaned money to NES in part at least to fund the litigation against me. However, I suspect that these loans were made with the specific and collateral intention of precipitating NES's insolvency and this receivership. The directors made no attempt to contact me as a shareholder regarding any financial distress. In fact, the directors failed to update me whatsoever including director vacancies, holding mandatory annual shareholder meetings, or providing mandatory financial statements.

10. Although Mr. Matovic appears to have recused himself from voting on the issue of his GSA, as seemingly evidenced by the resolution he has produced in his affidavit, I suspect that there were many discussions between Mr. Matovic, Mr. Greenwood, Mr. Naiman, and potentially others, wherein the option of enforcing the security and removing the intellectual property from the corporation were discussed.

11. I believe that NES and Mr. Matovic were hoping that I would run out of money during the arbitration and that they would therefore somehow 'win by default'. I am advised by my lawyers that, each time a payment to the arbitrator was due, NES would check with the arbitrator's office to see if I had paid my share of the arbitrator's deposit. Although it was difficult for me, I paid each instalment on time.

12. It was not long after the final instalment of the deposit was due and paid that Mr. Matovic announced his intention to abandon the arbitration process in favour of this receivership.

13. The bottom line is that NES and Mr. Matovic want to profit from the intellectual property that I co-invented with Mr. McEwen, which has considerable potential in the hands of a scientist that knows how to operate and commercialize it. At the same time, NES and Mr. Matovic do not want to pay me anything for its use.

14. The obstacles for NES and Mr. Matovic have always been the combination of the securities NES has issued to me (i.e. I am the principal common shareholder, own $1 million in preferred shares, and have a GSA over the company's assets) and the Unanimous Shareholders Agreement ("USA"), which is drafted to protect my interests.

15. In other words, there is an asset with tremendous potential, but it is locked inside a corporation which must prioritize and protect my interests. Mr. McEwen and I never would have transferred the intellectual property to the corporate vehicle of NES without protecting our interests.

16. Mr. Matovic knew, at all times, that NES was structured so as to protect my interests. He knew this before he invested. It is all right there in the USA. He chose to invest regardless; I believe, because he understood the potential of the technology I invented.

17. The board of NES has, since 2015, and in fits and starts, tried to extricate me from NES. I was purportedly removed from the Board contrary to the USA. My shareholder rights were purportedly suspended contrary to the USA. I was effectively exiled from the company contrary to the USA, receiving none of the information I am entitled to receive as shareholder. I was accused of misappropriating funds, which is not true. NES sued me in Court contrary to the arbitration provision in the USA, and in so doing sought to cancel my shares and security in the company. They were unsuccessful. We then litigated further in arbitration.

18. Throughout this time, NES and its board have vacillated between alleging urgency and dragging its feet, depending, it seems, on which posture suits its objectives at the time. NES and its board have also sought to downplay the potential of the technology I invented and, by extension, the value of the company and my interest in same. The suggestion that the technology and the company have little value are belied by the significant effort and money the board has expended fighting over them.

19. Mr. Matovic, as the purported Chairman and CEO and Director of NES, was a driving force throughout this lengthy crusade, which has taken an extraordinary financial toll on me.

20. I believe that, once it became clear to the NES board and Mr. Matovic that they would not be able to extricate me from the company without a fight, they decided to try and extricate

the intellectual property from the company instead, leaving me with a company that is worthless. In my assessment, that is what this receivership is all about.

21. I further believe that if the NES board had committed themselves to developing the technology that I invented through the vehicle of NES, then the company might have been a success and we all could have profited. But the proportion of the profits that would have been owed to me as the corporation's principal common shareholder and the holder of $1 million in preferred shares was unpalatable to them. Instead, the company, at the instance of its board, devoted its time and money toward trying to extricate me from the equation as director, shareholder and creditor, such that Mr. Matovic, Mr. Greenwood, Mr. Naiman and others would profit instead. In the result, the prejudice to me has been extreme.

22. I am respectfully asking this Court to stay this application and remit this matter back to the arbitrator that the parties voluntarily appointed for purposes of deciding the issues in dispute on their merits. Those issues include the proper scope of the dispute resolution clause in the USA, the legitimacy of the current NES board and its decisions, the amount of the debt properly owed to me, and the validity of the GSA that Mr. Matovic now seeks to enforce.

23. I make this affidavit in support of a stay of the within application and for no other or improper purpose.

SWORN BEFORE ME at the City of Kingston, in the County of Frontenac on this 18th day of November, 2020)

Commissioner for Taking Affidavits
(or as may be)

DOUGLAS J. HALLETT

TAB A

THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF
DOUGLAS HALLETT
SWORN THIS 18TH DAY OF
NOVEMBER, 2020

A COMMISSIONER, ETC.

ARBITRATION AGREEMENT

IN THE MATTER OF

1. **NATURAL ENERGY SYSTEMS INC. v. DOUGLAS HALLETT (CV-17-570515); and**

2. **HALLETT ENVIRONMENTAL AND TECHNOLOGY GROUP INC. v. NATURAL ENERGY SYSTEMS INC. (CV-19-00618071-0000)**

AND IN THE MATTER OF arbitration between the named parties before arbitrator, Colin L. Campbell, (Colin L. Campbell Dispute Resolution Services Inc.) of Amicus Chambers.

The parties have agreed to submit to binding arbitration in order to determine the above dispute.

1. The parties will execute a Written Submission to Arbitration, which will clearly define the nature of the dispute, the amounts involved, and remedies sought.

2. The parties will agree to an arbitration date and attempt to estimate the length of arbitration as well as possible.

3. There will be a pre-hearing arbitration meeting which may be conducted by telephone conference, to determine the following:

    a. issues in dispute;

    b. schedule of the hearing;

    c. scope and timing of pre-hearing disclosure of documents, witness statements, expert reports and any other matters;

    d. the procedure to be followed;

    e. the required deposit for Mr. Campbell's fees; and,

    f. any other matter pertinent to the hearing.

4. It is agreed that the proceedings will be treated as private and confidential.

5. The parties shall determine the powers and jurisdiction of the arbitrator, including the arbitrator's jurisdiction to award costs.

6. Neither Colin L. Campbell personally or through Colin L. Campbell Dispute Resolution Services Inc. shall be liable to the parties, their counsel, solicitors, witnesses or advisors for any act of omission or commission in respect of the hearing, the award, the reasons or in any other respect in or about the hearing and the arbitration process. In all respects the arbitrator shall have the immunity of a Superior Court Judge.

7. The parties agree to pay the arbitrator's fees and disbursements in accordance with Fee Schedule "A" attached. Mr. Campbell may withhold his award until all outstanding fees and disbursements have been paid.

Agreed to this 28th day of January, 2020.

NATURAL ENERGY SYSTEMS INC.

Gustavo F. Camelino
Camelino Galessiere LLP
Lawyers for Natural Energy Systems Inc.

DOUGLAS HALLETT and HALLETT ENVIRONMENTAL AND TECHNOLOGY GROUP INC.

Kurt Pearson
Cunningham, Swan, Carty, Little & Bonham LLP
Lawyers for Douglas Hallett and Hallett Environmental and Technology Group Inc.

Colin L. Campbell, Q.C.
Colin L. Campbell Dispute Resolution Services Inc.

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FEE SCHEDULE "A"

FEE ARRANGEMENTS

COLIN L. CAMPBELL'S FEES FOR ARBITRATION

Mr. Campbell's time is charged at the rate of $700.00 per hour, which shall include any pre-arbitration conferences, preliminary meetings, preparation for the arbitration, conducting the hearing, preparation of an Award and any other related services.

For a full day booking, the minimum fee shall be $5,000.00 plus HST.

DEPOSIT

The deposit required for an arbitration shall be fixed by Mr. Campbell following consultation with counsel. Cheques shall be payable to **Colin L. Campbell Dispute Resolution Services Inc.** Interim accounts may be rendered from time to time and refreshers on the deposits may be required.

DISBURSEMENTS

In addition to Mr. Campbell's fees, the parties will pay the costs of all disbursements relating to the matter, including the costs of long-distance telephone calls, couriers, photocopies, and any other disbursements incurred by Mr. Campbell in relation to the matter.

CANCELLATION FEES

Cancellation notice received within 30 days of the scheduled date and time:

All preparation time, expenses and disbursements, plus a cancellation fee of $5,000.00 plus HST for each scheduled day.

In the sole and unfettered discretion of Mr. Campbell, part or all of a cancellation fee may be waived.

Outstanding Accounts

Interest will be charged on any overdue accounts at 1.5% per month.

TAB B

THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF
DOUGLAS HALLETT
SWORN THIS 18TH DAY OF
NOVEMBER, 2020

A COMMISSIONER, ETC.

45

Court File No. CV-17-570515

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

NATURAL ENERGY SYSTEMS INC.

Plaintiff

- and -

DOUGLAS HALLETT

Defendant

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM OF DOUGLAS HALLETT

1. The defendant denies all the allegations contained in the Amended Statement of Claim, and specifically denies that the plaintiff is entitled to the relief set out in paragraph 1 of the Amended Statement of Claim.

INCORPORATION OF THE PLAINTIFF AND UNANIMOUS SHAREHOLDER AGREEMENT ("THE USA")

2. The defendant founded and incorporated the plaintiff, a federal corporation, on November 12, 2008 by way of Articles of Incorporation (hereinafter "the Articles").

3. In or about November 2008, the defendant entered into a Unanimous Shareholder Agreement ("the USA") with the plaintiff, the plaintiff's co-founder, Mr. Craig McEwen (hereinafter "Mr. McEwen"), since deceased, and Mr. Glenn Paul Greenwood (hereinafter "Mr. Greenwood"), a director, officer and shareholder of the plaintiff.

4. Pursuant to Schedule "A" of the USA, the parties to the USA, including the plaintiff, specifically confirmed that the defendant held 1,200,000 common shares, Mr. McEwen held 400,000 common shares and Mr. Greenwood held 400,000 common shares. Thus, the defendant was the majority shareholder.

5. The defendant was, at all material times, an officer and director of the plaintiff, as well as its principal shareholder.

6. The defendant presently holds 1,200,000 common shares and 1,000,000 preferred shares in the plaintiff, as well as 255,000 stock options bearing an option price of $1 per option.

7. The fair market value of the defendant's 1,200,000 common shares is unknown to the defendant but is estimated to be approximately $4 to $5 million.

8. The defendant's preferred shares have an agreed upon value of approximately $1 million (i.e. $1 per share).

DEFENDANT PROVIDES INTELLECTUAL PROPERTY TO PLAINTIFF IN EXCHANGE FOR PREFERRED SHARES

9. At all material times, the principal asset of the plaintiff has been intellectual property that the defendant developed and wrote with Mr. McEwen (hereinafter "the intellectual property").

10. The intellectual property concerns a proprietary gas phase chemical reduction process invented by the defendant and Mr. McEwen. The process, which is distinct from incineration or combustion, chemically reduces or "disassembles" any organic matter into a chemical quality, high energy product gas or syngas that can be used as transportation fuel, or to make value-added chemicals.

11. The intellectual property cost the defendant approximately $3.7 million to develop.

12. It was understood by the plaintiff, the defendant, Mr. McEwen and Mr. Greenwood that the defendant and Mr. McEwen would transfer ownership to the intellectual property to the plaintiff in two stages.

13. First, in an asset purchase agreement dated January 12, 2009 ("the Asset Purchase Agreement"), the plaintiff agreed to purchase certain intellectual property and software programs from the defendant and Mr. McEwen ("the purchased assets").

14. The purchase price of the purchased assets was the fair market value of the purchased assets as of the date of the Asset Purchase Agreement, which the parties to the Asset Purchase Agreement agreed was $2,000,000.00 ("the purchase price").

15. In payment and satisfaction of the purchase price, the plaintiff agreed to issue and deliver to the defendant and Mr. McEwen a total of 2,000,000 Class "A" preferred shares in the capital of the plaintiff, with the defendant receiving 1,000,000 of these Class "A" preferred shares ("the preferred shares") and Mr. McEwen receiving the remaining 1,000,000 Class "A" preferred shares.

16. In executing the Asset Purchase Agreement, the plaintiff represented and warranted, among other things, that it had all necessary corporate power, authority and capacity to acquire the Purchased Assets and to perform the obligations under the Asset Purchase Agreement, and that the issuance, allotment and delivery to the defendant of the Payment Shares complied with all requirements of any laws applicable and did not conflict with any provision of the articles of incorporation of the plaintiff, or conflict with, or create an event of default under any indenture, agreement or other instrument to which the plaintiff was a party.

17. The representations and warranties made by the plaintiff survived the completion of the terms of the Asset Purchase Agreement.

18. The parties specifically agreed to execute such further and other assurances and documents and to do all such things and actions necessary or proper for the carrying out of the purpose and intent of the Asset Purchase Agreement.

19. On or about January 12, 2009, the plaintiff's board of directors resolved to purchase the intellectual property from the defendant.

20. The defendant's 1,000,000 preferred shares were duly certificated on January 12, 2009. These preferred shares are redeemable on demand within sixty days.

21. The certificate representing the defendant's 1,000,000 preferred shares was duly executed by the defendant in his capacity as the plaintiff's President and CEO, and by Mr. Greenwood in his capacity as its Vice President.

22. Thus, as of January 12, 2009, the defendant held 1,200,000 common shares and 1,000,000 preferred shares in the plaintiff.

23. Then, on March 4, 2010, the defendant and Mr. McEwen assigned the worldwide patent for the process for the conversion of organic material to methane rich fuel gas which they had developed to the plaintiff for the sum of $1.00 "and other good and valuable consideration." This was the second, planned step in the transfer of the ownership of the intellectual property to the plaintiff.

24. It was understood by all parties, including Mr. McEwen and Mr. Greenwood, that in assigning the said patent to the plaintiff, the defendant would remain a director, officer and principal shareholder of the plaintiff, and the defendant, in his capacity as the plaintiff's shareholder, would thereafter profit from the plaintiff's use of the intellectual property he co-developed.

25. Given the potential uses of the intellectual property developed by the defendant, its fair market value was and remains considerable.

26. Accordingly, the defendant's shares in NES have value.

27. To the best of the defendant's knowledge, the last common shares issued and sold from the plaintiff's treasury were sold in or about March 2011 at a price of four dollars per share.

THE DEFENDANT PROVIDES MONEY AND EXPERTISE TO THE PLAINTIFF

28. From the time of the plaintiff's incorporation in 2008 until March 2015, the defendant supported the plaintiff with loans, advances and/or investments of his own money and the money of his wholly owned company, Hallett Environmental and Technology Group Inc. (hereinafter "HEAT"), of which the defendant is the sole officer, director and shareholder, and by arranging credit for the plaintiff secured by his personal assets, and by incurring expenses on behalf of the plaintiff which included incurring debts to third parties for the benefit of the plaintiff (hereinafter collectively referred to as "contributions").

29. The defendant incurred significant financial risk in making these contributions.

30. The total such contributions by the defendant and HEAT total approximately $1.7 million, exclusive of the intellectual property.

31. Article 4 of the USA specifically contemplates that shareholders may advance funds to the plaintiff from time to time.

32. It was never a requirement that all such contributions be approved unanimously by the plaintiff's directors, nor that they be approved specifically by Mr. Greenwood in his capacity as director, officer or shareholder.

33. There is no such requirement in the Articles or the USA, and no such resolution was ever passed by the plaintiff's board.

34. Furthermore, Mr. Greenwood was at one point removed as the plaintiff's signing officer and CEO, meaning he could not have signed-off on expenses at all.

35. The plaintiff was a start-up corporation run by individuals living in separate cities. Requiring that contracts, contributions and/or expenses receive "sign-off" by all directors was never required and would have been impractical or unworkable in the circumstances.

36. As the plaintiff's CEO and the inventor of the intellectual property underlying the plaintiff's business, it was understood and expected that the defendant would cause the plaintiff to enter into contracts and incur expenses in furtherance of the plaintiff's goals.

37. Some of the foregoing contributions were made through and by HEAT, pursuant to an agreement between the plaintiff and/or its directors wherein the defendant would cause HEAT to pay for certain expenses and invoice the plaintiff, and, thereafter, the plaintiff would reimburse HEAT.

38. It was well-understood by the plaintiff and/or its directors that all the foregoing contributions would be repaid (at least some with interest), when the plaintiff had the necessary operating funds to reimburse the defendant and/or HEAT.

39. These were not term loans, and no specific reimbursement date was ever specified.

40. As with many new businesses, the intent was that the founding directors would leverage their personal assets and those of their existing businesses, in order to generate the funds and effort necessary to get the plaintiff corporation "off the ground." The contributions were to be repaid once the plaintiff had secured contracts and was generating cash flow.

41. The plaintiff has repeatedly acknowledged its indebtedness to the defendant and/or to his company HEAT.

42. Mr. Greenwood has also acknowledged the plaintiff's indebtedness in his capacity as its director and shareholder.

43. Certain contributions were made by Mr. Greenwood and repaid by the plaintiff along the terms set out above.

44. The plaintiff has maintained at times that the defendant and/or HEAT was its employee, though neither the defendant nor HEAT ever signed an employment agreement and neither ever received any wages/remuneration in this regard.

45. If the defendant and/or HEAT are employees of the plaintiff, then each claims entitlement to their outstanding wages and/or remuneration.

THE GENERAL SECURITY AGREEMENT ("THE GSA")

46. On or about March 15, 2014, the parties entered into a General Security Agreement (hereinafter "the GSA") securing the assets of the plaintiff for the benefit of the defendant ("the secured assets").

47. The secured assets include the intellectual property, as specifically contemplated by the parties to the GSA and pursuant to sections 17 and 18 of the *Execution Act*, RSO 1990, c E.24, as amended.

48. The parties agreed to a GSA in favour of the defendant in recognition of, and to secure repayment of, the significant financial and other contributions the defendant made in the development and operations of the plaintiff.

49. The GSA was authorized by the plaintiff and was entered in accordance with Article 4 of the USA, which, among other things, provides that a shareholder may advance funds to the plaintiff, that interest shall be payable upon such sums at prime plus 3.0%, and that each loan "shall be secured."

49.(a) The parties entered into the GSA knowingly, and with the knowledge and advice of the solicitor for NES, who prepared all of the necessary documentation.

49.(b) An identical GSA was issued in favour of Mr. McEwen, in recognition of his significant contributions to the development of the intellectual property and the plaintiff's business generally.

49.(c) The plaintiff discovered its claims in respect of the GSA on the date it was executed or, in the alternative, by no later than February 27, 2015. Accordingly, the plaintiff's claims in respect of the GSA are statute-barred by operation of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B.

FURTHERANCE OF BUSINESS RELATIONSHIP WITH GREEN SHIELDS ENERGY INC.

50. In or about the end of 2014, the defendant began to foster a business relationship with the non-party Green Shields Energy Inc. (hereinafter "Green Shields") with a view to attracting its business to the plaintiff.

51. Mr. Greenwood, in his capacity as a director of the plaintiff and its shareholder, encouraged the defendant to pursue this contract on the plaintiff's behalf.

52. As part of this work, pilot scale testing and other project work was required, which the defendant carried out along with the non-parties Dave Willis, Rich Pinder and Dan Winters.

53. These individuals (or alternatively, some of them) were employees and/or contractors of the plaintiff.

54. It was understood by the plaintiff that, in carrying out this work, these individuals were accruing salary, which the plaintiff was to pay to them when the company became solvent.

55. In carrying out this work, these individuals incurred project expenses as necessary to conduct the testing and complete the work.

56. A contract with Green Shields could not be obtained without this necessary work.

57. On or about December 14, 2014, the defendant, in his capacity as a director and officer of the plaintiff, sent Green Shields a project proposal on the plaintiff's behalf.

58. In or about January 2015, the defendant secured the plaintiff's contract with Green Shields which generated paying business and positive cash flow to the plaintiff for the first time.

59. The defendant authorized the plaintiff to enter into this contract, in his capacity as the plaintiff's President, officer, director and founder, as he was permitted to do and/or as was his duty to do as it was in the best interests of the plaintiff.

60. The value of this contract was approximately $2 million.

61. The plaintiff and Mr. Greenwood (in his capacity as director and shareholder) were each aware of the contract and, though his approval was not required to proceed, Mr. Greenwood did approve of the project in writing and congratulated the defendant on securing same.

62. There was never any agreement or requirement that entering into such contracts required the unanimous approval of the plaintiff's directors or shareholders.

63. There was never any agreement between the defendant and Mr. Greenwood—be it express or implied, written or otherwise—which required the defendant to seek Mr. Greenwood's approval or "sign off" on the plaintiff's business.

64. On the contrary, it was well-understood that the defendant could bind the corporation without formality, and without "sign off" by Mr. Greenwood in his capacity as director or shareholder.

65. There were multiple instances where Mr. Greenwood, in his capacity as director, made decisions regarding the plaintiff's business and/or incurred obligations/expenses without first seeking the approval of the defendant.

66. The plaintiff and its directors further understood, at all material times, that in order to secure the new contract the defendant and/or HEAT would incur expenses on the plaintiff's behalf, to be repaid by the plaintiff once revenues allowed.

67. This was the only way to secure such a contract, given that the plaintiff had no revenue.

68. Through the revenue generated by the Green Shields project, some of the plaintiff's outstanding expenses were paid, as were wages and expenses for the testing of the project. This amounted to approximately $175,717.96.

69. Contrary to the plaintiff's allegations, there was nothing surreptitious about these payments.

70. Mr. Greenwood, in his capacity as director and/or shareholder, specifically told the defendant that the plaintiff should provide some cash payments to those who have earned them from the deposit of its first order.

71. Mr. Greenwood, in his capacity as the plaintiff's director and/or shareholder, also incurred expenses on behalf of the plaintiff, though unrelated to the Greenshields proposal/contract, and, similarly, he caused the plaintiff to reimburse him for these expenditures.

72. In addition, Mr. Greenwood received $5,000.00 from the proceeds of the Greenshields contract, despite Green Shields' insistence that Mr. Greenwood not be involved with the project, and despite Greenwood in fact not being involved with the project and doing no work on the project.

73. Thus, both the defendant and Mr. Greenwood (and others) were paid and/or reimbursed by the plaintiff from the proceeds of the Greenshields contract and other revenue.

74. Despite such accounting and payments/reimbursements being commonplace at the time, and despite having acknowledged its indebtedness to the defendant, the plaintiff now alleges the foregoing constituted "misappropriation" by the defendant, an allegation that the defendant strongly denies, and puts the plaintiff to strict proof of.

75. If any accounting, payments and/or reimbursements made by the plaintiff at the direction of the defendant constitute "misappropriation" (an allegation which is strongly denied) then the said "misappropriation," or part thereof, was discovered by the plaintiff and/or its directors on or before February 27, 2015, or was discoverable on or before that date through the exercise of reasonable diligence. Accordingly, claims to these sums are therefore statute-barred pursuant to sections 4 and 5 of the *Limitations Act,* 2002, S.O. 2002, c 24, Sch. B.

76. Yet, the plaintiff has collected and/or attempted to collect accounts receivable from Green Shields in accordance with the contract between the plaintiff and Green Shields.

77. At least some of these accounts receivable are referable to work undertaken by the defendant, Dave Willis, Rich Pinder and Dan Winters on the plaintiff's behalf.

78. In other words, the plaintiff takes the position that it incurred no obligation to the defendant, Dave Willis, Rich Pinder and Dan Winters who carried out necessary work to develop the project, while at the same time seeking to collect payment for this same work from Green Shields.

DEFENDANT PURPORTEDLY REMOVED AS CHAIRMAN AND CEO, DENIED RIGHTS AS SHAREHOLDER

79. On March 9, 2015, the defendant was purportedly removed from his position as the plaintiff's director, Chairman of the Board and CEO.

79.(a) In the weeks and months leading up to the March 9, 2015, some or all of the plaintiff, its board of directors, Mr. Greenwood, Dragan Matovic ("Mr. Matovic"), Robert Naiman

("Mr. Matovic") and/or Michael Greenwood devised to remove the defendant from the plaintiff's board of directors with a view to taking over the plaintiff and profiting from the intellectual property the defendant had co-invented.

79.(b) Throughout this period, Mr. Greenwood, Mr. Naiman and/or Mr. Matovic were attempting to sell or otherwise transfer significant shares in the corporation, including through a $6.0 million private placement, all without the defendant's knowledge or consent or approval of the plaintiff's board of directors, contrary to the USA, and despite the fact that Mr. Greenwood had already been demoted to a reduced role with the plaintiff and Naiman had already been dismissed from the plaintiff.

79.(c) At the same time, Mr. Greenwood and Mr. Naiman, dissatisfied with their demotion and dismissal respectively, were surreptitiously telephoning, emailing and meeting with shareholders and investors in a campaign to convince others that the defendant ought to be removed as a director and officer of the plaintiff.

79.(d) The plaintiff's after-the fact allegations that the defendant was removed from the plaintiff corporation for transferring shares or misappropriating funds are simply an attempt to justify the defendant's ouster.

80. The defendant's purported removal as director was and is void because, among other things, it occurred at a shareholders' meeting which was convened and held in contravention of the USA, and because the said removal contravened Article 3.4 of the USA which specifically provides that the defendant "shall be entitled to elect a majority of the members of the Board, so long as he owns Shares, either directly or indirectly."

81. The defendant owned shares directly (or, alternatively, indirectly) from the date of the plaintiff's incorporation through March 9, 2015, and still does.

82. As at March 9, 2015, there were approximately 2,600,000 shares of the plaintiff issued and outstanding.

83. Based on the valuation of each share as at March 2011 (i.e. to the defendant's knowledge, the last date on which shares were issued from treasury, at a price of $4 per share), the corporation had a value of at least $10.4 million on March 9, 2015, and the defendant's common shares had an estimated value of at least $4.7 million.

83.(a) The defendant's removal from the Board was also contrary to Article 11.2 of the USA, which required each of the parties to the USA to "at all times cast their votes for the election of the persons as provided in [the USA] as officers and directors of the Corporation, and will at no time cast their vote as a director or shareholder for the purpose of ousting the other parties from office, nor will any of the parties take any measure by way of entering into a conspiracy or agreement for the purpose of ousting the other parties from office or for doing that which may prove detrimental to the interests of any of the parties."

84. In April or May 2015, the defendant's rights as shareholder were purportedly suspended by the board which had been improperly "elected" at the meeting of March 9, 2015.

85. This board meeting was invalid because, among other things, the board was elected contrary to Article 3.4 of the USA, and because the director's meeting wherein the defendant's rights were purportedly suspended did not have a quorum per Article 3.7 of the USA, which requires the defendant to be in attendance in order for a quorum to be achieved.

86. The board purported to suspend the defendant's rights as shareholder on the basis that the defendant had allegedly transferred securities of the plaintiff in contravention of Article 2 of the USA.

87. No such transfers were ever completed by the defendant.

88. In the alternative, any such transfers and/or attempted transfers of securities by the defendant were in accordance with the Articles and/or the USA.

89. Mr. Greenwood, in his capacity as the plaintiff's director and/or shareholder, encouraged the defendant to use some of his securities in the plaintiff to repay those who had helped keep the plaintiff's business going.

90. Mr. Greenwood himself has acquired, sold, transferred or otherwise disposed of ~~their~~ his own shares, securities and/or options of the plaintiff, and/or attempted to do so, and/or agreed in principle to do so at a future time.

91. Mr. Greenwood has made such transfers and/or attempted transfers and/or agreements to transfer to:

    a. Mr. Dragan Matovic, who holds himself out as the current Chairman and CEO of the plaintiff;

    b. Halex Capital Inc., of which Mr. Matovic is, or was, Chairman and CEO, and in which Mr. Matovic has a pecuniary interest;

    c. Mr. Greenwood's brother, Michael Greenwood, in repayment of personal loans made by Michael Greenwood to Mr. Greenwood;

    d. Mr. Howard Craig;

    e. Mr. Hesham Shafie;

    f. Mr. David Richardson;

    g. Friends and/or associates of Mr. Greenwood who loaned him money and were repaid in options and/or shares, and whose identity is unknown to the defendant but known to Mr. Greenwood; and/or

    h. Other legal persons yet unknown to the defendant but known to the plaintiff and/or Mr. Greenwood

92. Mr. Greenwood also coordinated the issuance of treasury shares to Michael Greenwood or others, at less than fair market value, without the defendant's prior knowledge, approval or consent. This was done in the lead-up to the March 9, 2015 vote, with a view to ensuring the defendant's ouster.

93. Article 1 of the USA specifically provides that "Shares" means not only shares but, among other things, any securities issued by the Corporation which are convertible into shares of the Corporation.

94. As the term "security" is not defined in the USA, the defendant pleads and relies on the definition of "security" in section 1(1) of the *Securities Act,* R.S.O. 1990, c. S.5.

95. Thus, while the plaintiff's board of directors has purported to, and continues to, suspend the defendant's shareholder rights on the basis of alleged share transfers alleged to be in contravention of the USA, it has taken no similar action against Mr. Greenwood and/or Mr. Matovic, who actively encouraged and/or participated in such transfers, have done so since at least 2013.

96. The shareholder rights Mr. Greenwood and Mr. Matovic remain unfettered, and the pair now effectively lead the corporation.

97. The defendant states that this unequal treatment was, and continues to be, oppressive.

98. The defendant maintains that his shareholder's rights are not suspended and never were.

99. Since May 2015, however, the defendant's rights as shareholder were and have been ignored by the plaintiff, on the pretense of his alleged "wrongdoing".

100. At all material times, the plaintiff and its directors owed duties of loyalty and care to the defendant in his capacity as its shareholder and creditor.

101. The defendant's requests for a shareholders' meeting have been ignored by the plaintiff.

102. Between 2015 and 2017, and at the urging of the plaintiff, the parties attempted to negotiate the resolution of the issues between them. These negotiations did not, ultimately, bear fruit.

103. With the benefit of hindsight, the defendant believes that the plaintiff and its directors participated in the said negotiations carelessly and/or in bad faith.

104. Among other things, the plaintiff and its directors either wilfully or negligently minimized (and therefore misrepresented) the value of the company to the defendant during the said negotiations, and intentionally prolonged the said negotiations, with the hope that the defendant would be left with no choice but to agree to a one-sided resolution of the dispute in favour of the plaintiff.

105. The plaintiff and its directors knew, at all material times, that the defendant's assets were tied up in the plaintiff, including much of his life savings and the intellectual property he developed.

106. Since March 9, 2015, the defendant has not received the financial statements and other reporting such as meeting minutes or adopted resolutions which he is entitled to as the plaintiff's shareholder.

107. The plaintiff has not held any shareholders meetings. Alternatively, if it has held shareholders meetings, it has not invited the defendant.

108. The defendant has no access to the plaintiff's minute book, share register, annual financial statements, and/or other important corporate records including key contracts necessary to determine the value of his share holdings.

109. The defendant has received no dividends on his shares.

110. In view of all the foregoing, the defendant has been effectively exiled from the company by the plaintiff its directors from March 2015 onward.

111. Pursuant to the Articles, a holder of any Class "A" preferred shares may require the plaintiff to redeem all or from time to time any of the Class "A" preferred shares registered in the name of such holder by giving to the plaintiff at its registered office a written request for redemption.

112. In 2015, the defendant notified the plaintiff that he wished to redeem his preferred shares in accordance with the Articles.

113. In reply, the plaintiff offered that it did not have enough funds to redeem the preferred shares and was therefore prohibited from doing so pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c C-44.

114. As the redemption price was not paid in accordance with the request made pursuant to the Articles, the defendant's rights as a preferred shareholder remain unimpaired, as specifically contemplated by the Articles.

115. Despite the plaintiff's efforts to exile him from its business, the defendant has become aware of additional patents having been issued in several other countries, based on the intellectual property co-developed by the defendant.

116. The plaintiff and its directors have purposefully not informed the defendant of these new patents so as to make it appear to the defendant that both his share holdings and the intellectual property are less valuable than they really are.

117. The plaintiff has continued to hold out the defendant's accomplishments, and those of his previous company ELI Eco Logic, as its own for the plaintiff's own marketing purposes.

118. The plaintiff, at the direction of its board, carried out this course of conduct with the intent, in whole or in part, to injure and/or cause a loss to the plaintiff, to harm his economic interests, and/or to exile him from the company so that it might evade its liabilities to the defendant and profit from the intellectual property created by, and contributions made by, the defendant.

119. As a consequence of being exiled from the company, the defendant's income stream became unstable and, at times, insufficient. This was a foreseeable result of the conduct of the plaintiff and its directors, who knew that the plaintiff had placed himself at great financial risk to make the plaintiff a success.

120. In the result, the defendant had to rely on CPP, OAS, family loans and the sale of his cottage and the foreclosure of his primary home in order to survive.

121. During this same period, the value of the intellectual property has steadily eroded in the hands of the plaintiff, as the worldwide patent is valid for only 20 years.

122. Contrary to the parties' reasonable expectations, the defendant has been deprived of his ability to "work the patent" through the plaintiff and generate a profit therefrom.

123. All and/or some the foregoing conduct constituted one or more breaches of the duties of loyalty and care owed to the defendant.

124. At no point was the defendant "insolvent" within the meaning of Article 2.3 of the Agreement. Among other things, the defendant holds significant common and preferred shares in the plaintiff, and the plaintiff is significantly indebted to the defendant. Alternatively, if the ~~plaintiff~~ defendant was insolvent, he was rendered insolvent solely, primarily or partly through the act(s) and/or omission(s) of the plaintiff and, in any event, the plaintiff never exercised its right to purchase all the defendant's shares at Fair Market Value, in accordance with Article 2.3. In the further alternative, if the defendant was insolvent, then by the same definition so too was Mr. Greenwood.

125. The defendant respectfully states that the plaintiff's request at paragraph 1(c) of its Amended Statement of Claim, that this Honourable Court effectively cancel all the securities issued by the plaintiff to the defendant, is unsupported at law and in equity.

PARTIAL DEFAULT JUDGMENT AWARDED, SET ASIDE

126. The plaintiff's action was commenced by way of Notice of Action on February 28, 2017. Thereafter, the plaintiff served its Statement of Claim on April 15, 2017, though not in the required form.

127. It was not until after the defendant received the plaintiff's statement of claim on April 15, 2017 that the defendant learned that the plaintiff took the position that (a) it was not indebted to the defendant and/or his company whatsoever; and (b) the defendant had no equity in the plaintiff and/or that what equity he has ought to be voided.

128. Throughout 2017 the defendant faced numerous medical issues, requiring amongst other things, scans, visit and check-ups with doctors and specialists, as well as surgery.

129. This notwithstanding, he made reasonable efforts to negotiate with the plaintiff and to obtain legal representation. The defendant did not have enough funds to hire a lawyer, and yet Legal Aid also refused to represent him.

130. The defendant was noted in default on June 2017, and partial default judgment was rendered against the defendant on August 15, 2017.

131. Thereafter, the plaintiff registered a writ against the defendant with the Sheriff of the County of Frontenac. Said writ purported to secure an exaggerated sum in costs.

132. It was only after the defendant challenged the writ that the plaintiff acknowledged that it secured the incorrect sum (citing a clerical error).

133. Thereafter, the plaintiff took no steps to correct the writ at the Sheriff's office.

134. The defendant made numerous requests to have the default judgment set aside on consent, which were refused by the plaintiff.

135. On February 8, 2018, the plaintiff delivered to the defendant a Notice of Intention to Exercise the Right to Purchase Shares, which purports to be effective December 28, 2017 although executed on February 6, 2018.

136. By Order dated February 26, 2019, the partial default judgment was set aside, with leave to deliver a statement of defence and counterclaim, among other relief granted to the defendant.

ALLEGED PATENT INFRINGEMENT

136.(a) The defendant has not infringed Canadian Patent 2 690 884 (hereinafter referred to as "the NES Canadian patent") as alleged in the Amended Statement of Claim.

136.(b) The defendant has not been misrepresenting to the public that the NES Canadian patent is his own to use and market, as alleged in the Amended Statement of Claim.

136.(c) The defendant denies that the plaintiff has suffered any reputational injury or lost any corporate opportunities as a result of the alleged misrepresentations, and puts the plaintiffs to strict proof thereof.

136.(d) "Gas phase reduction" is not a copyrighted term, nor is it a patentable process. Rather it is a term of art in organic chemistry.

136.(e) The plaintiff is not the sole marketer or would-be seller or licenser of gas phase reduction technology; there are several players in this space.

136.(f) The plaintiff holds several patents for a specific kind of gas phase chemical reduction process, being the intellectual property co-invented by the defendant and Mr. McEwen.

136.(g) After he was wrongfully removed from the plaintiff's board, and his shareholder rights were wrongfully suspended, the defendant developed a new and superior hydrogen reduction technology ("the Hallett technology").

136.(h) The essential elements of the Hallett Technology are patentably distinct from those set out in the NES Canadian Patent.

136.(i) The potential applications of the Hallett Technology are different and broader than the potential applications of the NES Canadian Patent. For example, the Hallett Technology can chemically reduce explosives, munitions and weapons. Any attempt to use technology based on the NES Canadian Patent for this purpose could result in an explosion.

136.(j) The defendant has not appropriated any of the plaintiff's business opportunities. The defendant is working with Green Shields, but Green Shields refuses to work with Mr. Greenwood and has so since before the defendant was exiled from the plaintiff.

136.(k) As to the allegations at paragraph 10 of the Amended Statement of Claim, in each case, it was the Hallett Technology or other technology being discussed, and not the technology presently held by NES.

136.(l) Unfortunately, in at least one publicly available document that the defendant is aware of, a third party has mistakenly referred to the plaintiff or the technology it holds in connection with the defendant, notwithstanding that what the defendant is marketing is a patentably distinct technology. The defendant did not author this document.

136.(m) The defendant denies that he owes a fiduciary duty to the plaintiff. Nor is the defendant party to a non-competition agreement with the plaintiff.

ACTION OUGHT TO BE STAYED AND DISPUTE REFERRED TO ARBITRATION

137. The defendant defends this proceeding in accordance with the Court's endorsement dated February 26, 2019 and in order to preserve his rights.

138. The defendant states, however, that the plaintiff's action ought to be referred to arbitration.

139. Section 10.1 of the USA is entitled "Dispute Resolution" (hereinafter referred to as "the Arbitration Clause") and provides as follows:

> 10.1 **Dispute Resolution**
> All disputes and questions whatsoever which shall arise between any of the parties in connection with this Agreement, or the construction or application thereof or any Section or thing contained in this Agreement or as to any act, deed or omission of any party or as to any other matter in any way relating to this Agreement, shall be resolved by arbitration. ...

140. All the plaintiff's claims all fall within the ambit of the Arbitration Clause.

141. The plaintiff has commenced this action in the improper forum.

142. Accordingly, the plaintiff's action ought to be dismissed or stayed pursuant to sections 6 and 7 of the *Arbitration Act, 1991*, S.O. 1991, c. 17.

143. In the alternative, those aspects of the plaintiff's claim concerning "disputes and questions whatsoever... between the any of the parties in connection with [the USA] or the construction or application thereof or any Section or thing contained in [the USA] or as to any act, deed or omission of any party or as to any other matter in any way relating to [the USA]" are subject to the Arbitration Agreement and, on that basis, these aspects of the plaintiff's claim ought to be dismissed or stayed because they are required to be resolved by arbitration.

144. The Plaintiff pleads the USA in seven of the eleven paragraphs of its Amended Statement of Claim: 1(j), 2, 3, 6, 7, 8 and 9.

145. Furthermore, paragraph 2 of the Partial Default Judgment, which related to the alleged "misappropriation of funds" by the defendant and grants the plaintiff the ability to continue to seek an adjudication of its Claim for Cancellation of Securities, makes this determination specifically referable to the USA: i.e. "...as determined pursuant to the provisions of the [Shareholders' Agreement]".

146. The plaintiff's claim to misappropriated funds cannot reasonably be separated from the remainder of the claims pleaded by the plaintiff and thereby activates the Arbitration Clause pursuant to the operation of s. 7(5) of the *Arbitration Act, 1991*.

147. Arbitration of this dispute would likely secure the just, most expeditious and least expensive determination of the proceeding on its merits, and in accordance with the reasonable expectation of the parties to the USA.

PLAINTIFF'S ALLEGED DAMAGES

148. The defendant denies misappropriation of funds. At worst, the defendant was party to the plaintiff's imperfect and/or deficient recordkeeping. Mr. Greenwood, Mr. Matovic, Mr. McEwen and Mr. Robert Naiman were also party to this.

149. To the extent that the plaintiff has suffered any damages, which is denied, its damages claimed are excessive and remote and the plaintiff has failed to mitigate them.

150. If this Court retains jurisdiction, then the plaintiff's claim would be an appropriate matter to proceed by way of Simplified Procedure. The defendant pleads and relies upon the cost provisions of Rule 76.13(2), (3) and (6) of the *Rules of Civil Procedure*.

151. The defendant states that, to the extent the plaintiff is properly owed any sum arising from this action (which is not admitted but expressly denied), then the defendant is entitled to set-off against this sum his damages arising out of the plaintiff's wrongful conduct, as set out above.

152. The defendant therefore pleads and relies on the doctrines of equitable set-off and legal set-off and section 111 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

153. To the extent the defendant's damages by way of set-off are greater than any damages awarded to the plaintiff in this proceeding (which damages are not admitted and expressly denied), the defendant is entitled to an order for payment of same.

154. The defendant pleads and relies upon the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, the *Courts of Justice Act*, R.S.O. 1990, c.C.43, the *Negligence Act*, R.S.O. 1990, c. N. 1., the *Patent Act*, RSC 1985, c P-4, the *Copyright Act*, RSC 1985, c C-42, and the *Execution Act*, R.S.O. 1990, c. E. 24, each as amended.

155. In view of all the foregoing, the defendant submits that the plaintiff's action should be dismissed with costs payable by the plaintiff on a substantial indemnity basis, including but not limited to those costs wasted by the plaintiff having knowingly commenced this action in the improper forum.

COUNTERCLAIM

156. The defendant seeks:

a. An Order that

i. the act(s) or omission(s) of the plaintiff or any of its affiliates has effected a result,

ii. the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

iii. the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to and/or that unfairly disregards the interests of the defendant, in his capacity as its security holder, creditor, director and or officer, pursuant to sub-sections 241(1) and (2) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended.

b. Interim and/or final orders for just, equitable and fitting relief, pursuant to sections 241(3)(a), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended.

c. Interim and final orders restraining the oppressive conduct of the plaintiff.

d. An interim and final order reinstating the defendant's shareholder's rights, if same were and are, in fact, suspended.

e. An independent audit and accounting of all share transactions involving the plaintiff's issued and outstanding shares from the date of its incorporation to present, to be paid for by the plaintiff;

f. An independent accounting of the Fair Market Value of the defendant's outstanding shares in the plaintiff as at March 9, 2015 and at present, to be paid for by the plaintiff;

g. An Order directing the plaintiff to purchase the defendant's 1,000,000 preferred shares for $1 million pursuant to 241(3)(d) and (f) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended;

h. Damages of $1.7 million, for breach of contract, breach of the duty of good faith in contract performance, intentional interference with economic and/or contractual relations, unjust enrichment, negligence, and as compensation for oppression pursuant to sub-section 241(3)(j) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended;

h.(i) An order cancelling any and all securities in the plaintiff issued without the prior consent of the defendant, including those securities wrongfully issued to Mr. Matovic and/or Halex Capital;

i. Enforcement of the GSA; and

j. His costs of the counterclaim on a full indemnity basis, together with his disbursements and applicable taxes thereon, to be paid for by the plaintiff.

157. The defendant pleads and relies upon the allegations in his Statement of Defence for the purposes of his Counterclaim.

158. The defendant states that he is entitled to the agreed-upon value of his preferred shares ($1,000.000), to be paid for by the plaintiff. The defendant seeks an Order or arbitral award in this regard, pursuant to sections 241(3)(d), (f) and (h) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended.

158.(a) During the period in which the defendant has been effectively exiled from the plaintiff corporation,

(i) the plaintiff has failed to generate any profitable contracts or business opportunities despite the significant potential of the intellectual property invented by the defendant, owing in part to the exile of the defendant; the sole living co-inventor of the intellectual property at issue, and the only one among the plaintiff's principals who knows how to use the technology he invented;

(ii) the plaintiff has diluted the defendant's ownership in the company by issuing additional shares without the defendant's consent, contrary to the provisions of the USA.

(iii) Mr. Greenwood, Mr. Naiman and/or Mr. Matovic have transferred shares or options without the defendant's prior consent or approval, with full knowledge of the plaintiff.

(iv) Mr. Greenwood, Mr. Naiman and/or Mr. Matovic have redeemed their options or extended their own options, with the agreement or consent of the plaintiff, while refusing or failing to extent the defendant's options.

(v) the plaintiff has accumulated significant debts, including to Mr. Matovic and his company Halex Capital Inc., owing in part to its litigation against the defendant, which is being funded primarily through this debt.

(vi) the plaintiff has granted security over its inventory, equipment, motor vehicle and other assets to Halex Capital Inc., without the defendant's consent, contrary to the provisions of the USA.

(vii) the defendant suspects that the plaintiff, Mr. Greenwood, Mr. Naiman and Mr. Matovic, or some of them, have caused one or more corporations to be incorporated, with a view to transferring or licencing the intellectual property held by the plaintiff to that new corporation, or realizing the plaintiff's business and other opportunities through that new corporation, and thereby profiting from the intellectual property while circumventing or avoiding the plaintiff's obligations to the defendant.

158.(b) In the result, the Fair Market Value of the defendant's significant investment and common shares in the plaintiff corporation has been reduced.

159. The defendant states that the Fair Market Value of his common shares ought to be determined in accordance with Article 7 of the USA (or, alternatively, by the Court or an arbitrator) both as at the date he was exiled from the corporation and at present.

160. The defendant states that the valuation of his securities is required to resolve this proceeding. Said valuation ought to be conducted by an independent third party with relevant expertise, appointed jointly by the parties and paid for by the plaintiff.

161. In furtherance of the share valuation sought, the defendant seeks an interim Order or arbitral order requiring the plaintiff to produce to the defendant the following:

    a. audited financial statements in the form required by section 155 of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended;

    b. an independent audit and accounting of all share transactions involving the plaintiff's issued and outstanding shares from the date of its incorporation to present, as well as an accounting of the plaintiff's shares in Natural Energy Systems America Inc., with the said productions to be paid for by the plaintiff, pursuant to section 241(3)(i) of the said Act;

    c. copies of the plaintiff's key contracts along with those of any affiliated entities, subsidiaries and wholly owned corporations, including Natural Energy Systems America Inc.;

    d. such further and other information as an expert in such valuation may require in order to determine the value of the defendant's shares.

162. The defendant further seeks an Order appointing new directors in place of or in addition to the directors Mr. Greenwood, Mr. Matovic and Mr. Naiman, pursuant to sections 241(3)(e) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended.

163. The defendant states that the plaintiff and the said directors have shown a pattern of conduct which is oppressive to and/or unfairly disregards the defendant's interests as shareholder and creditor. They have continued to apply one set of standards to Mr. Greenwood, Mr. Matovic and/or Mr. Naiman which benefit their personal interests. At the same time, they have maintained the defendant's shareholder rights are suspended and that agreements the plaintiff made with the defendant are void, based on actions by the defendant which were consented to, encouraged and/or also undertaken by the plaintiff and/or some or all of these directors.

164. In the alternative, the defendant states that an Order liquidating and dissolving the plaintiff is required, pursuant to sections 214 and 241(3)(l) of the *Canada Business Corporations Act*, R.S.C. 1985, c C-44, as amended. The defendant states that this would be a fair and appropriate means by which to achieve a just resolution of this case.

165. The plaintiff has been unjustly enriched insofar as it has received significant financial and other benefits, including intellectual property, from the defendant with the understanding that the defendant would continue to lead the company and benefit as its shareholder once the plaintiff became solvent and was generating revenue, as more particularly set out above.

166. The defendant, in making these contributions, has been correspondingly deprived.

167. There is no juristic reason why this result should obtain. On the contrary, the contracts between the parties, including the GSA, offer sound juristic reasons why the plaintiff ought to compensate and/or pay restitution to the defendant.

168. The plaintiff seeks an appropriate personal and/or proprietary restitutionary remedy to compensate him for the said unjust enrichment, in the form of money or, alternatively, a constructive trust over the intellectual property he assigned to the plaintiff.

169. The defendant advances this Counterclaim in accordance with the Court's endorsement dated February 26, 2019 and in order to preserve his rights and claims.

170. The defendant requests that his Counterclaim be referred to arbitration pursuant to the Arbitration Clause, along with the main action, or, alternatively, that those aspects of his counterclaim falling within the ambit of the Arbitration Clause be referred to arbitration.

171. In the event this Honourable Court retains jurisdiction over all or part of the defendant's counterclaim, the defendant respectfully requests that these issues be tried together with, or immediately after, the main action.

DATE: March 6, 2020

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PLAINTIFF DEFENDANT

Court File No. CV-17-570515

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in Toronto, Ontario

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM

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APPLICANT

-and-

NATURAL ENERGY SYSTEMS INC.
RESPONDENT

Court File No. CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF DOUGLAS HALLETT
(Sworn November 18, 2020)

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TAB 4

TAB 4

TRANSCRIPTS OF CROSS-EXAMINATIONS – TO BE PROVIDED

HALEX CAPITAL INC.
APPLICANT

-and-

NATURAL ENERGY SYSTEMS INC.
RESPONDENT

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MOTION RECORD OF THE MOVING PARTY, DOUGLAS HALLETT

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