

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY THE 21st  
MADAM JUSTICE PEPALL ) DAY OF AUGUST, 2008

BETWEEN:

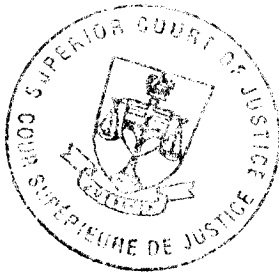
JAMES RYAN

Applicant

- and -

6356095 CANADA INC.

Respondent



**ORDER**

**THIS MOTION**, made by Gail Gleed, in her capacity as an Inspector of 6356095 Canada Inc., formerly known as Excapsa Software Inc. (“Excapsa”), for orders, *inter alia*, (a) confirming the appointment of a substitute Inspector in the Excapsa liquidation, (b) discharging and removing the current Liquidator and appointing a replacement Liquidator, along with associated and ancillary relief to effect the transition, (c) approving the conduct and activities of the Liquidator to date and approving the fees and disbursements of the current Liquidator, its counsel and counsel to Excapsa, and (d) making a number of clarification or clean-up changes to the Liquidation Order (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of Mintz & Partners Limited (“Mintz”) dated August 19, 2008 (the “First Report”), the Supplemental Report of Mintz dated August 21, 2008 (the “Supplemental Report”), the Affidavit of Gail Gleed sworn August 8, 2008, the Affidavit of Daniel Weisz sworn August 19, 2008, the Affidavit of Clifton T. Prophet sworn August 19, 2008, the Affidavit of Gary Steinhart sworn August 13, 2008, and the Consent of XMT Liquidations Inc., filed, and on hearing the submissions for counsel for the Moving Party,

counsel for Mintz, and counsel for XMT Liquidations Inc., the Director under the CBCA failing to appear although served,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report of Mintz is hereby validated and abridged such that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS**, *nunc pro tunc*, that James Ryan and John K. Fitzgerald be and are hereby discharged as Inspectors and that the appointment of Melissa Gaddis as an Inspector in the Dissolution (as such term is defined in the Amended and Restated Order of the Honourable Madam Justice Mesbur dated November 30, 2006 (“Liquidation Order”)) is hereby confirmed, and that Melissa Gaddis shall act as an Inspector in the Dissolution with all the duties, obligations, powers, rights and protections provided for in the *Canada Business Corporations Act*, RSC 1985, C-44 as amended (“CBCA”), the Plan of Liquidation and Distribution, and the Liquidation Order.

3. **THIS COURT ORDERS** that Mintz be and is hereby discharged and removed as “Liquidator” pursuant to the Liquidation Order and “Trustee” under the Plan of Liquidation and Distribution and that XMT Liquidations Inc. is hereby appointed and confirmed as replacement Liquidator under the Liquidation Order and replacement Trustee under the Plan of Liquidation and Distribution, with all duties, obligations, powers, rights and protections provided for in the CBCA, the Plan of Liquidation and Distribution and the Liquidation Order; provided that this Order shall not prevent Deloitte & Touche LLP (“Deloitte”) (which merged with Mintz & Partners LLP), and any affiliates of Mintz or Deloitte, from continuing to provide accounting, consulting and/or tax services to Excapsa, the Inspectors or their advisors.

4. **THIS COURT DIRECTS** that Mintz shall as soon as practicable after the date of this Order transfer to XMT Liquidations Inc. all assets, property and records of Excapsa and the Dissolution in its possession including, without limitation, all cash balances maintained in the Liquidator’s accounts, to be held and administered by XMT Liquidations Inc. in accordance with the Liquidation Order and/or further Order of this Honourable Court.

5. **THIS COURT ORDERS AND DECLARES** that the transfer of property and assets from Mintz to XMT Liquidations Inc. shall not constitute a distribution of property in the possession or control of Mintz for the purposes and within the meaning of s. 159 of the *Income Tax Act*.

6. **THIS COURT ORDERS** that the First Report of Mintz and the Supplemental Report of Mintz, including the Statements of Receipts and Disbursements attached thereto, be accepted and approved and that the actions and activities of Mintz, in its capacity as Liquidator, as set out therein, be and are hereby approved .

7. **THIS COURT ORDERS** that the fees and disbursements of Mintz in its capacity as Liquidator, counsel for the Liquidator, and counsel for Excapsa as set out in Appendices H, I and J of the First Report of Mintz and the Affidavits of Daniel Weisz sworn August 19, 2008, Clifton P. Prophet sworn August 19, 2008 and Gary Steinhart sworn August 13, 2008 be and are hereby approved and passed pursuant to the Liquidation Order.

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing and without limiting the terms of the Liquidation Order, the claims bar process conducted by the Liquidator pursuant to the Liquidation Order and the resolution by the Liquidator of claims received pursuant to the claims bar process, as described in the First Report, be and are hereby approved and that all Pre-filing Claims and Settled Claims (each as defined in the Liquidation Order) are hereby forever barred and extinguished and any person holding a Pre-filing Claim or Settled Claim are forever barred from asserting or enforcing such Pre-filing Claim or Settled Claim and all such persons shall be deemed to have fully and finally released and discharged Excapsa from such claims.

9. **THIS COURT ORDERS** that any and all claims or causes of action by any person against Mintz, in its capacity as Liquidator, be and are hereby forever extinguished and barred, except any claim that may arise out of the gross negligence or wilful misconduct on the part of Mintz.

10. **THIS COURT ORDERS**, *nunc pro tunc* to the extent necessary, that the requirement for Excapsa or the Liquidator to prepare, file or deliver financial statements required by the

CBCA and the associated regulations and the requirement to hold annual meetings of shareholders are hereby dispensed with until further Order of this Court.

11. **THIS COURT ORDERS** that paragraph 34 of the Liquidation Order shall be deleted and replaced with the following:


34. **THIS COURT ORDERS** that the Liquidator or Excapsa is authorized and directed to set aside the aggregate amount of US\$5,000,000 or such additional amount approved by further order of this court (the "Indemnification Fund") in the trust account of counsel to Excapsa for the purpose of funding actual and potential claims, together with legal fees and other expenses of defending such claims (the "Claims Expenses"), against

- (a) the parties to the Indemnification Agreements,
- (b) the current, former and future Inspectors;
- (c) Mintz and XMT Liquidations Inc., in their capacities as Liquidator, and their respective officers, directors, shareholders, partners, employees, agents and independent contractors, and
- (d) Excapsa and its current, former and future officers, directors, employees, and independent contractors.

12. **THIS COURT ORDERS** that Excapsa be and is hereby directed and authorized to indemnify any current, former or future Inspectors in the Dissolution and current and future directors and officers of Excapsa on terms substantially similar to the Indemnification Agreements between Excapsa and its former directors and certain of its officers as ratified by paragraph 33 of the Liquidation Order.

13. **THIS COURT DIRECTS** that the compensation or remuneration payable to any person acting as an Inspector in the Dissolution and/or a director of Excapsa (including any

person acting in both capacities) shall not exceed US\$30,000.00 per annum, in the aggregate, and payment of compensation up to such amount is hereby authorized and approved.

  
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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG 21 2008

PER/PAR:



JAMES RYAN

Applicant

6356095 CANADA INC.  
and Respondent

Court File No: 06-CL-6752

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

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Solicitors for the Moving Party