

**IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE OF REGINA**

**IN THE MATTER OF THE APPOINTMENT OF AN INTERIM RECEIVER
UNDER SECTION 47
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3**

BETWEEN:

SASKATCHEWAN TELECOMMUNICATIONS

Applicant

- and -

**WIRELESS AGE COMMUNICATIONS LTD. and
WIRELESS SOURCE DISTRIBUTION LTD.**

Respondents

AFFIDAVIT OF GARY N. HOKKANEN

I, **GARY N. HOKKANEN**, of the Town of Markham, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and Chief Financial Officer of the Respondent, Wireless Age Communications Ltd. ("**Wireless Age**"), and a director and Chief Financial Officer of the Respondent, Wireless Source Distribution Ltd. ("**Wireless Source**"). As such, I have knowledge of the following matters to which I swear.

Corporate Structure and Nature of the Businesses

2. Wireless Age and Wireless Source are subsidiaries of Wireless Age Communications, Inc. ("**WACI**"). WACI is a Nevada-based public company. WACI's majority shareholder is Newlook Industries Corp. ("**Newlook**"), which is a public company that trades on the TSX Venture Exchange.

3. Wireless Age operates retail stores in Saskatchewan and Manitoba. Through its stores in Saskatchewan, Wireless Age distributes communication products and services for the Applicant, Saskatchewan Telecommunications ("**SaskTel**"), under a distributorship agreement dated March 31, 2003 (the "**Distributorship Agreement**"). I have not attached a copy of the Distributorship Agreement because SaskTel views it commercially sensitive. A copy can be made available to the Court, if required.

4. As required by SaskTel, Wireless Age purchases all of its wireless handset products from Bell Distribution Inc. ("**BDI**"), at a price determined by SaskTel.

5. Wireless Source was a distributor of prepaid cellular telephone cards and cardless EPIN prepaid services, land mobile radios, accessories and other ancillary communications products. Its largest supplier was SaskTel, pursuant to a prepaid cellular service card distribution agreement dated July 31, 2002 (the "**Prepaid Card Agreement**"). A copy of the Prepaid Card Agreement can be found at Exhibit A to the affidavit of Michael Anderson sworn January 8, 2009 ("**Anderson Affidavit**").

Cash Flows, Revenue Streams and Financing

6. Under the terms of the Prepaid Card Agreement, Wireless Source purchased prepaid cellular telephone cards and EPINs from SaskTel at a price defined by SaskTel. In turn, Wireless Source remitted payments to SaskTel for the prepaid cellular cards and services.

7. Wireless Source operated on very thin margins – less than 3%. This margin was dictated by SaskTel.

8. Under the terms of the Distributorship Agreement, SaskTel agreed to pay Wireless Age the following:

- (a) activation commissions for each cellular network access sold to a customer, depending on the nature of the network access;
- (b) hardware reimbursements for handsets sold free of charge or below a normal margin; and
- (c) other commissions, depending on the nature of the services.

9. Given that SaskTel dictates the price for every product and service Wireless Age sells in the Distributorship Agreement and publishes a payment date list for payment of amounts described in 8 above, Wireless Age's cash flow is dependent upon receipt of these payments from SaskTel.

10. Prior to November 23, 2008, Wireless Age, Wireless Source and Newlook had a revolving credit facility with TCE Capital Corporation ("TCE"). Pursuant to that credit facility, TCE provided financing for Wireless Age's, Wireless Source's and Newlook's operations and took a security interest in Wireless Age's receivables - that is, the payments SaskTel was obliged to make to Wireless Age under the Distributorship Agreement - as well as all of its assets. Wireless Source's and Newlook's receivables and assets were also subject to the security interest.

Indebtedness of Wireless Age, Default by SaskTel and Termination of Prepaid Card Agreement

11. Contrary to the statement in paragraph 9 of the Anderson Affidavit, Wireless Age is not indebted to SaskTel. In fact, the opposite is true. SaskTel is indebted to Wireless Age. As of January 8, 2009, the date of the Anderson Affidavit, SaskTel owed Wireless Age approximately \$732,000.00 in fees, approximately \$287,000.00 of which was overdue. The Anderson Affidavit does not disclose this fact.

12. To the best of my knowledge, as the date of this Affidavit all of the money SaskTel owes to Wireless Age is overdue.

13. Only Wireless Source is indebted to SaskTel, and Wireless Age has guaranteed the indebtedness under the Repayment Agreement referred to below and in the Anderson Affidavit.

14. As of June 1, 2008, Wireless Source had accrued accounts payable to SaskTel in the amount of approximately \$3.7 million, of which approximately \$2 million was overdue on the then-existing 30-day payment terms. Due to the extremely low margin, Wireless Source had been regarding the prepaid card business as a financing mechanism for several years and considered this level of ageing as standard practice. Wireless Source had been a distributor for

SaskTel since 2003 and at various times during the relationship had payables owing to SaskTel that were more than 30 days old. SaskTel and Wireless Source were always able to come to mutually acceptable terms for payment of these amounts.

15. At this time Wireless Age, Wireless Source, Newlook and WACI had successfully negotiated a new \$10 million credit facility with Callidus Capital Corporation to allow them to retire the indebtedness to SaskTel. Newlook also obtained an additional \$2.5 million credit facility from TCE to fund its own investments going forward.

16. After an exchange of correspondence, in late June 2008 SaskTel and WACI agreed to a payment stream to allow Wireless Source to bring its account current and SaskTel agreed to allow Wireless Source 60-day payment terms. Copies of the correspondence exchanged between WACI and SaskTel in June 2008 are attached and marked as Exhibit "A".

17. However, in or about July 2008, SaskTel began withholding payments it owed to Wireless Age under the Distributorship Agreement, without notice. This withholding caused serious cash flow difficulties for Wireless Age. Throughout July and August, WACI was in constant written communication with SaskTel to try to resolve this issue. Copies of the correspondence exchanged between SaskTel and WACI during July and August 2008 are attached and marked as Exhibit "B".

18. Then, on August 19, 2008, without warning and contrary to representations previously made by SaskTel in a meeting in May 2008, as described below, SaskTel delivered written notice of termination of the Prepaid Card Agreement to Wireless Source, effective September 30, 2008.

19. The termination of the Prepaid Card Agreement caused the Callidus Capital Corporation refinancing to be terminated. The termination also caused TCE to terminate the Newlook credit facility.

20. Wireless Source was completely caught off guard by the termination, since it had been led to believe by SaskTel in the above-mentioned meeting in May 2008 that the status quo would be maintained until 2009, at which time SaskTel would issue a call for tenders for the prepaid card business.

The Repayment Agreement

21. As of the termination of the Prepaid Card Agreement, Wireless Age and Wireless Source, together with Newlook, owed TCE approximately \$3.7 million under secured loans. TCE immediately demanded the collection of all receivables associated with the Prepaid Card Agreement be paid to TCE as a permanent reduction of the credit facility.

22. At the same time, SaskTel stopped paying Wireless Age for commissions and hardware subsidies, putting an additional strain on cash flow. SaskTel also insisted on deducting the amounts it owed to Wireless Age from the amounts Wireless Source owed it, which it was not entitled to do under either the Distributorship Agreement or the Repayment Agreement. SaskTel's position ignored the fact that Wireless Age and Wireless Source were separate legal entities and seemed intended to bully Wireless Source into paying more quickly. This posed a problem for Wireless Age, since TCE had a security interest in its receivables. At this time TCE threatened legal action against Wireless Source, Wireless Age, Newlook and SaskTel.

23. In early October, WACT's CEO, John Simmonds, proposed a solution that served everyone's interests. The solution involved SaskTel holding the amounts it owed to Wireless Age until they reached the level of the debt Wireless Age owed to TCE, at which point SaskTel would pay the amount to TCE and take a security interest in Wireless Age's and Wireless Source's assets. Wireless Age and Wireless Source would also make regular payments to SaskTel to retire Wireless Source's indebtedness.

24. This solution was accepted by all parties and ultimately incorporated into the repayment agreement dated October 23, 2008 between Wireless Age, Wireless Source, SaskTel and Newlook ("**Repayment Agreement**"). The Repayment Agreement can be found at Exhibit B to the Anderson Affidavit.

25. On November 23, 2008, the receivables owed by SaskTel to Wireless Age had accrued to an amount equal to the TCE debt. Accordingly, SaskTel paid the receivables to TCE to retire the TCE debt and TCE relinquished its security interest.

26. Section 3.1 of the Repayment Agreement requires Wireless Age/ Wireless Source to repay the amounts owed to SaskTel on a fixed schedule. Section 3.2 of the Repayment

Agreement provides that if Wireless Age/Wireless Source prepays \$1 million on or before December 31, 2008, interest would not begin to accrue on the balance of the indebtedness until April 1, 2009. Section 7.2 allows SaskTel to set off amounts it owes to Wireless Age against the amounts owing under the Repayment Agreement only in the event that Wireless Age/Wireless Source misses any of the payment set out in section 3.1.

27. The Repayment Agreement provided a significant benefit to SaskTel. Not only did it provide SaskTel the ability to retain funds that it would have otherwise had to pay to Wireless Age; it went from being an unsecured creditor of Wireless Source to a secured creditor of both Wireless Source and Wireless Age.

28. By contrast, the Repayment Agreement placed significant constraints on Wireless Age's and Wireless Source's cash flow throughout October, November and December 2008 because it deprived Wireless Age of the benefit of its revenue stream derived from SaskTel.

29. Despite these cash flow pressures, as of January 9, 2009, Wireless Age/Wireless Source had made all the payments required by section 3.1 of the Repayment Agreement. In particular, Wireless Age/Wireless Source made the \$250,000 payment due on November 30, 2008 and the \$250,000 payment due on December 31, 2008, thereby reducing the indebtedness to approximately \$5.86 million. SaskTel acknowledged receipt of these payments and paragraph 9 of the Anderson Affidavit acknowledges that the indebtedness is \$5.86 million as of December 31, 2008.

30. Wireless Age/Wireless Source had not prepaid \$1 million on December 31, 2008, since doing so was optional and not a requirement.

31. Importantly, at no time has SaskTel purported to terminate the Repayment Agreement or make demand under the Wireless Age guarantee.

SaskTel Breaches the Repayment Agreement, and Precipitates a Cash Flow Crunch

32. In or about mid-December 2008, SaskTel without warning and without justification withheld another payment due to Wireless Age. SaskTel's ostensible reason for

doing so was its concern that Wireless Age was low on inventory. Wireless Age had, however, already begun to address this problem in November 2008.

33. Corporate management in Toronto (WACI) had questioned why regional operating management of Wireless Age had over \$1 million in inventory but was "out of stock". Corporate management retained a consultant to review the situation at the time, who concluded that regional operating management's purchasing was very weak and that it was overstocked with outdated inventory, inventory shipped "dead on arrival" and several SKU's that should have been returned to BDI. Wireless Age addressed the concerns and started buying more often and in smaller amounts, with all purchases being approved by corporate management in Toronto.

34. This approval process was part of the reason why inventory was needed at Wireless Age stores as referred to in paragraph 28 of the Anderson Affidavit. Regional operating management had not informed WACI that the inventory referred to in paragraphs 28(b) and (c) of the Anderson Affidavit were required. I learned this on January 8, 2009.

35. WACI was aware of the requirement for \$150,000 of regular inventory for stores referred to in paragraph 28(d) of the Anderson Affidavit. This need existed, however, because of SaskTel's failure to pay hardware and other commissions to Wireless Age. In the absence of those payments, WACI was not prepared to authorize the \$150,000 purchase.

36. In any event, part of the inventory problem was the result of general problems of supply experienced throughout the industry. The Blackberrys referred to in paragraph 28(a) of the Anderson Affidavit, for example, were unavailable throughout the Christmas season.

37. SaskTel was also scheduled to pay Wireless Age a hardware reimbursement on January 5, 2009. SaskTel's standard practice was to send to Wireless Age a formal notice called a "Payment Advice" three days in advance when such a payment was coming. Accordingly, in the case of this payment, SaskTel should have notified Wireless Age by December 30, 2008.

38. As of January 2, 2009, Wireless Age had not heard from SaskTel regarding the January 5, 2009 payment. Accordingly, I sent e-mails to Mr. Anderson and to Ian Schofield of Meyers Norris Penny ("MNP") to inquire whether the payment was coming. Copies of my e-

mails to Mr. Anderson and Mr. Schofield sent on January 2, 2009 are attached and marked as Exhibit "C".

39. I did not receive a response to my e-mails. As a result, I suspected that SaskTel would once again start withholding all payments and would not make the payment that was due to be paid on January 5, 2009.

40. My suspicions proved to be correct – SaskTel withheld the payment scheduled for January 5th.

The January 5th Meeting

41. Later in the day on January 2nd, after I had sent my e-mails inquiring about the January 5th payment, Wireless Age and Wireless Source received a letter from MacPherson, Leslie and Tyerman ("MLT") on behalf of SaskTel demanding that they attend a meeting in Regina on January 5, 2009. A copy of the letter is attached and marked as Exhibit "D".

42. I and Mr. Simmonds attended the meeting on January 5, 2009. SaskTel was represented at the meeting by Michael Anderson, John Meldrum and Kristian Wells of SaskTel, as well as Ian Schofield of MNP. Conrad Hadubiak of MLT was also present. Mr. Hadubiak spoke on behalf of SaskTel. The purpose of the meeting appeared to be to pressure Wireless Age and Wireless Source into making the optional \$1 million prepayment contemplated by the Repayment Agreement immediately, and at least within the next 30 days.

43. Mr. Simmonds and I were well prepared for the meeting and presented four options to fund the repayment of all the amounts due to SaskTel. The four options were:

- (a) the sale of the assets and liabilities to a third party – on December 22, 2008, WACI had received an offer to purchase all the assets and liabilities of Wireless Age and Wireless Source for \$12 million, \$2 million of which WACI agreed it would pay directly to SaskTel on closing of the sale;
- (b) the sale of marketable securities with a market value of over \$2 million held by WACI for cash to be injected over time into Wireless Age and Wireless Source;
- (c) steps Newlook was taking close a senior convertible debt private placement of a minimum of \$5 million to fund Newlook's investments going forward and in order to inject cash into Wireless Age and Wireless Source; and

- (d) a potential transaction between Newlook and a NASDAQ-listed corporation holding over \$4 million in cash to acquire Newlook's position in WACI for cash and stock, the cash proceeds of which would be injected into Wireless Age and Wireless Source.

44. All of these options would have injected cash into Wireless Age and Wireless Source for the purpose of providing early payments to SaskTel. None of these options were mutually exclusive and WACI and Newlook intended to pursue all four options.

45. I had prepared a formal written presentation setting out the history of the issue and describing these options, which I presented at the meeting. A copy of the presentation and the supporting documents are attached and marked as Exhibits "E" and "F". Copies of the \$12 million offer WACI had received and the new credit facilities are included in the supporting documents.

46. After my presentation and some discussion, the SaskTel representatives, Mr. Schofield and Mr. Hadubiak left the room to caucus for some time, and came back with a proposal from Mr. Watson, SaskTel's CEO. That proposal as presented by Mr. Hadubiak, involved WACI and/or Newlook raising \$1 million from whatever resources it had to immediately fund the operations of Wireless Age and Wireless Source. SaskTel would continue to withhold the first \$1 million due from SaskTel and Wireless Age and Wireless Source would get credit for these payments against the tail end of the Repayment Agreement scheduled payments. Mr. Hadubiak insisted that the regular contracted month end payments would also be due and payable in accordance with the Repayment Agreement.

47. The SaskTel representatives gave us 24 hours to respond to this proposal.

48. Mr. Simmonds and I left the meeting and discussed the SaskTel proposal. After some discussion, we determined that we could not accept it on the grounds that it would increase the cash flow pressures on Wireless Age and Wireless Source. Accordingly, on January 6, 2009, I wrote to Mr. Anderson to convey our position. A copy of my letter to Mr. Anderson is attached and marked as Exhibit "G".

49. Mr. Hadubiak promised that SaskTel would respond to my letter within 24 hours. I heard nothing within 24 hours, and kept pressing Mr. Anderson for a response, and to find out

when SaskTel would respond. Mr. Anderson responded to my inquiries by saying that Mr. Watson was unavailable and that SaskTel was working through the issues. Attached and marked as Exhibit "H" are copies of e-mails between Mr. Anderson and me sent between January 5, 2009 and January 7, 2009.

50. I never received a substantive response from SaskTel to my inquiries. Instead, on January 9, 2009, I received a copy of the Interim Receivership Order made in this proceeding.

Neither Company Was Insolvent

51. As of the date of termination of the Prepaid Card Agreement, Wireless Age and Wireless Source were generating earnings before interest, taxes, depreciation and amortization ("EBITDA") of approximately \$4 million.

52. As of September 30, 2008, Wireless Source was receiving, on average, \$1.6 million of revenue per month from prepaid cards and EPIN services and earning gross margin of approximately \$47,000 per month.

53. For December 2008, Wireless Age's sales were approximately \$2.5 million. While this figure is a 2% decrease from December 2007 sales, given the current economic climate these results are quite good. Wireless Age's 2008 sales were \$25 million, which is a 15% increase from 2007.

54. To the extent that Wireless Age has had difficulties, it is because SaskTel has withheld payments properly due to Wireless Age, thereby compromising its cash flow, and because \$3.7 million had been removed from Wireless Age's and Wireless Source's operations.

55. With the cooperation of BDI, Wireless Age and Wireless Source had been generally meeting their obligations as they became due. In November, I agreed with BDI to limit its exposure to \$2 million and that throughout the Christmas period Wireless Age would purchase on a "cash with order" basis, which it did.

56. Contrary to the statements made in the Anderson Affidavit, Wireless Age has been maintaining inventory. As of December 31, 2008, its inventory level was approximately \$2

million, of which \$1.3 million was in the stores. To the extent that inventory had been low earlier, it was because of the purchasing issues referred to in paragraphs 32 through 35, above.

57. The debt to Harvard Broadcasting is also easily explained. There was an internal dispute between corporate management and regional management about how regional management was spending advertising dollars. We contacted Harvard and agreed on a catch up payment stream which started in late November and early December 2008.

58. Wireless Source is still operating. There are two divisions of Wireless Source: iMobile - which was primarily the prepaid card business; and LandMobile - which to this day operates distributing professional grade land mobile radios in Canada.

No Improper Payment of Money to Parent Companies

59. The issue of improper payments is without merit. As I have explained to SaskTel on many occasions, Wireless Age and Wireless Source have for several years loaned their net cash earnings upstream to WACI and/or Newlook to invest in other opportunities on behalf of all shareholders. At termination of the Prepaid Card Agreement, the two companies combined were achieving \$4 million in EBITDA per year, which generated approximately \$1 million being loaned upstream per quarter.

60. Most recently cash was taken out to pay for payroll at the corporate level (CFO, CEO, Corp Secretary, accountants, admin staff and other expenses, including consulting fees to monitor regional operating management's practices). Some of the October funds were transferred to Newlook so it could meet commitments in a pending energy transaction. As I advised SaskTel in my presentation at the January 5th meeting, it is very difficult to reverse these commitments once you've made them, especially in light of the lost Callidus Capital Corporation and TCE financings.

61. Moreover, the funds that were paid to the parent companies were taken out in anticipation that they would be repaid by the parents as required. Unfortunately, the global credit crisis affected the speed with which the funds could be replaced.

62. Importantly, the payment of funds from Wireless Source and Wireless Age to the parents has not affected their ability to meet their obligations under the Repayment Agreement. At the time SaskTel delivered its Notice of Intention to Enforce Security and the Interim Receivership Order was issued, Wireless Age and Wireless Source had met all of their payment obligations under the Repayment Agreement.

63. During the January 5th meeting, John Simmonds agreed that no funds would be paid out of the companies to the parents without SaskTel's permission. Nothing in my January 6th letter reneged on or contradicted that agreement. No funds have been paid to the parents since January 5th.

64. Wireless Age and Wireless Source's financial position became difficult not because of historic upstream loans but because it has had \$3.7 million stripped out of Wireless Age and Wireless Source to repay TCE and because SaskTel started withholding payments due to Wireless Age and therefore due TCE.

65. SaskTel has evidenced a general disregard for the fact that Wireless Age and Wireless Source are separate legal entities, with separate contractual relationships with SaskTel. SaskTel did this by threatening to withhold, and in fact withholding, payments due under the Distribution Agreement in order to pressure the companies to make accelerated payments under the Repayment Agreement.

Material Non-Disclosure

66. The Anderson Affidavit fails to mention a number of significant and relevant facts, including:

- (a) the fact that the Distributorship Agreement obliges SaskTel to make payments to Wireless Age as set out above;
- (b) the fact that Wireless Age is not indebted to SaskTel;
- (c) the fact that SaskTel is indebted to Wireless Age;
- (d) the fact that SaskTel has improperly and in breach of the Distributorship Agreement failed to make payments owing to Wireless Age, thereby precipitating

