2004 BCSECCOM 150

Headnote
Mutual Reliance Review System for Exemptive Relief Applications – Employment agreements with senior management entered into for reasons other than to increase the value of the consideration paid to management for their shares in a take-over bid and may be entered into despite the prohibition on collateral agreements in the Legislation

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF THE STANLEY WORKS AND 6181708 CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" and collectively, the "Decision Makers") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application (the "Application") from The Stanley Works ("Stanley") and 6181708 Canada Inc. (the "Offeror") (collectively the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the offers (the "Offers") made January 30, 2004 by the Offeror, an indirect wholly owned subsidiary of Stanley, to purchase all of the issued and outstanding common shares (the "Common Shares") and all of the issued and outstanding Class A common shares (the "Class A Shares", and together with the Common Shares, the "Shares") of Frisco Bay Industries Ltd. (the "Company"), the amendments to the employment agreements (the "Amended and Restated Employment Agreements") which the Company entered into with Barry Katsof and Ronald Waxman (the "Executives"), who are also the beneficial owners of Class A Shares and certain options to acquire Common Shares, and which agreements were consented to by Stanley who also participated in the negotiations thereof, were made for reasons other than to increase the value of the consideration paid to such Executives for the Shares owned by them and that the entering into such agreements is authorized;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the *Agence nationale d'encadrement du secteur financier* is the principal regulator for this Application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in the *Agence nationale d'encadrement du secteur financier* Notice 14-101.

AND WHEREAS the Filer has represented to the Decision Makers that:

1. Stanley is a corporation organized under the laws of State of Connecticut. Stanley is subject to the informational filing requirements of the *United States Securities Exchange Act of 1934* (the "Exchange Act").

2. Offeror is an indirect wholly-owned subsidiary of Stanley and is incorporated under the federal laws of Canada. The Offeror was incorporated for the purpose of making the Offers.

3. The Company is incorporated under the federal laws of Canada.

4. The Company is subject to the informational filing requirements of the Exchange Act and the rules of the Nasdaq Stock Market. The Company is not a reporting issuer in any jurisdiction in Canada.

5. The authorized capital of the Company consists of an unlimited number of preferred shares, an unlimited number Common Shares and 1,220,610 Class A Shares. As at January 19, 2004, 1,971,657 Common Shares and 799,567 Class A Shares were issued and outstanding and no other shares in the capital of the Company were issued and outstanding. The Common Shares are listed on the Nasdaq SmallCap Market under the symbol "FBAY". The Class A Shares are not traded on the Nasdaq or any other securities market or exchange.

6. As at January 19, 2004, there were 233,575 Common stock options (the "Options") and 900 Stock Appreciation Rights outstanding under the Stock Incentive Plan of the Company.

7. The Offeror is seeking to purchase all of the issued and outstanding Common Shares (the "Common Shares Offer") and Class A Shares (the "Class A Shares Offer", and together with the Common Shares Offer, the "Offers") of the

Company (including Common Shares which may become outstanding pursuant to the exercise of Options and Stock Appreciation Rights) at U.S.$15.25 in cash per share.

8. The Company entered into a Support Agreement with Stanley and the Offeror on January 19, 2004 which sets forth the terms and conditions upon and subject to which the Offers are made.

9. Stanley and the Offeror have entered into a Lock-Up Agreement dated January 19, 2004, (the "Lock-Up Agreement"), with various holders of securities in the capital of the Company pursuant to which such holders have agreed among other things to tender to the Offers all shares in the capital of the Company owned by them or acquired by them pursuant to the exercise of Options or otherwise (collectively, the "Locked-Up Shares").

10. The Locked-Up Shares include 100% of the Class A Shares and 90,500 Common Shares (or Common Shares issuable upon exercise of Options), representing in the aggregate approximately 30% of the Common Shares on a fully-diluted basis.

11. Barry Katsof is the Chairman and Chief Executive Officer of the Company. Mr. Katsof beneficially held prior to the Offers 546,793 Class A Shares and Options to acquire 25,000 Common Shares representing, in the aggregate, approximately 19.0% of the outstanding Common Shares on a fully-diluted basis, and has agreed to tender them to the Offers under the Lock-Up Agreement.

12. Mr. Ronald Waxman is the Vice-Chairman and Chief Operating Officer of the Company. Mr. Waxman beneficially held prior to the Offers 252,707 Class A Shares and Options to acquire 25,000 Common Shares representing, in the aggregate, approximately 9.2% of the outstanding Common Shares on a fully-diluted basis, and has agreed to tender them to the Offers under the Lock-Up Agreement.

13. Each of the Executives is a party to an employment agreement with the Company dated October 20, 1993, as amended and extended (collectively the "Existing Employment Agreements") which agreements have both substantially similar material terms.

14. Each Executive's employment agreement has historically been renewed for successive terms of three years, most recently in May 2003, May 2000 and June 1997. The material terms and conditions of the Existing Employment Agreements are as follows:

(a) Salary: Pursuant to amendments and extensions dated May 1, 2003 of each of the Existing Employment Agreements, each Executive is entitled to a salary of $350,000 for the period from May 1, 2003 to April 30, 2004, and thereafter to an increase to this salary by the amount equal to the product obtained by multiplying the salary in the immediately preceding year by the percentage increase in the Consumer Price Index All Items for Regional Cities (Montreal) published by Statistics Canada, for the immediately preceding year. In addition, each Executive is entitled to paid vacation, health benefits and an allowance to lease an automobile suitable to his position and to cover the expenses in connection therewith.

(b) Bonus: Each Executive is also entitled under their Existing Employment Agreement to receive an annual bonus as may be determined by the Compensation Committee of the Company in its sole discretion, taking into account, among other factors, his overall compensation for the year in question. The annual bonus paid to each Executive for the fiscal year ended January 31, 2003 was $150,000 and for the fiscal year ended January 31, 2004, was $200,000.

(c) Termination: The Existing Employment Agreements may be terminated by the Company for cause at any time by written notice, or other than for cause upon two-months written notice and the payment of an indemnity reasonable in the circumstances and in accordance with the current practices in the Province of Quebec.

(d) Death Benefit: If an Executive dies during the Term, his Existing Employment Agreement will terminate. For a period of three (3) years from the date of his death, his widow will be entitled to receive a death benefit (the "Death Benefit") equal to the Executive's annual compensation paid during the fiscal year of the Company immediately preceding his death. This benefit will be paid in equal, bi-weekly instalments. If the Executive's wife is also deceased at the time of his death, the benefit will pass to his children. If the Executive's wife dies during the three (3) year period following his death, the benefit will continue to be paid to his children in equal shares.

15. On January 19, 2004, the Company entered into the Amended and Restated Employment Agreements with each of the Executives setting forth their continued employment and appointing Mr. Katsof as Director of Business Development and Integration of Stanley Security Solutions Canada and Mr. Waxman as General Manager of Stanley Security Solutions Canada. Such Amended and Restated Employment Agreements incorporate all of the

previous amendments to the Existing Employment Agreements and provide for substantially the same terms as set forth in the Existing Employment Agreements, subject to the following modifications, which become effective only as of the date that the Offeror takes up and pays for Common Shares and Class A Shares pursuant to the Offers (the "Effective Date"):

a) Salary: Each Executive's annual salary is fixed at $350,000, without any further automatic annual increase.

b) Bonus: The bonus entitlement under each Amended and Restated Employment Agreement is now fixed, rather than discretionary, and is:

   i) payable monthly in an amount computed by multiplying $0.015 times the number of ATM Transactions effected during the relevant calendar month, where "ATM Transactions" is defined as a financial transaction processed in the Company's ATM Network and reported to the Company at the end of each month by a third party processor; and

   ii) subject to an annual maximum of $150,000.

   This bonus is performance-based and is designed to introduce an objective performance measurement to provide assurance that the performance of the ATM Business is maintained and does not materially decline following the completion of the Offers.

c) Term: Each Amended and Restated Employment Agreement provides for a three year term (being the same term as the term of the Executive's previous employment terms with the Company) from the Effective Date of the agreement (the "New Term") to the third anniversary of the Effective Date, unless otherwise terminated prior to the end of the New Term.

d) Non-competition and non-solicitation covenants: Covenants not previously contained in the Existing Employment Agreements have been added restricting each Executive from engaging in specified activities competitive with the business of the Company and from soliciting employees, customers or clients of the Company, for a period of two years from the date on which the Executive last performs services for the Company. Subject to customary exceptions, the Executives also agreed to keep secret and retain in the strictest confidence all confidential information and not to use or exploit any such confidential information for their benefit.

e) Termination for cause: If the Executive is terminated for cause, he will be entitled to his base salary and incentive bonus due up to the date of termination;

f) Termination without cause: Each Amended and Restated Employment Agreement specifies that in the event of termination of the Executive's employment other than for cause (as defined in the agreement), he will be entitled to (i) his base salary and incentive bonus owed up to the date of termination, and (ii) a lump sum payment in cash equal to the remainder of the total base salary and maximum incentive bonuses that the Executive would have received had he continued his employment through the end of the New Term ("Contract Payment"), a payment that the Executives and the Company consider to be reasonable in the circumstances of such a termination in accordance with current practices in the Province of Quebec; provided, however, that in any case, the Executive's maximum Contract Payment would be equal to (a) $1,500,000 minus (b) the total base salary and incentive bonus payments previously paid to the Executive in respect of periods prior to the date of termination; and

g) Death Benefit: If the Executive dies during the New Term, his widow is entitled to receive, as a death benefit, an amount equal to the Contract Payment. If the Executive's wife is also deceased at the time of his death, the children will be entitled to the Contract Payment.

16. In summary, (i) the base salaries of each of the Executives are equal to the Executive's base salary from May 1, 2003 through April 30, 2004, and (ii) the incentive bonus each Executive is entitled to receive under the Amended and Restated Employment Agreements is now directly linked to performance of the ATM business and is now also subject to a maximum which is less than the average bonus received by each of the Executives in respect of the years ended January 31, 2003 and January 31, 2004. The aggregate annual salary and bonus that each Executive is entitled to receive during the term of the Amended and Restated Employment Agreements does not exceed the aggregate amount actually received by them in each of the most recent two fiscal years of the Company under their Existing Employment Agreements.

17. The amount that each Executive would receive under the Amended and Restated Agreements should they be terminated without cause, has now been crystalized at a specified, rather than an unspecified, amount.

18. Stanley has consented to, and participated in the negotiations of, the terms and conditions of the Amended and Restated Employment Agreements.

19. In connection with the Amended and Restated Employment Agreements, the Company, Stanley, the Offeror and each of the Executives have entered into a letter agreement (the "Letter Agreement") governing the treatment of the Amended and Restated Employment Agreements. The Letter Agreement provides, among other things, that if the approval by Canadian securities commissions or regulatory authorities of the Amended and Restated Employment Agreements has not been obtained prior to the date which is one business day prior to the expiry time of the Offers or the Offeror does not take up or pay for the Shares pursuant to the Offers, then the amendments effected by the Amended and Restated Employment Agreements (other than the terms and conditions related to the Executives' obligation not to compete) will be of no further force and effect and the Existing Employment Agreements shall continue in full force and effect.

20. Each of the Offeror, Stanley and the Company have confirmed that the Amended and Restated Employment Agreements have been made for valid business reasons unrelated to the Executives' holdings of Shares or options to acquire Shares and not for the purpose of conferring an economic or collateral benefit that the other shareholders of the Company do not enjoy or to increase the value of the consideration to be paid to the Executives for the Shares tendered under the Offers.

21. The Amended and Restated Employment Agreements have been negotiated at arm's length and are on terms that are commercially reasonable.

22. Stanley believes that the continued involvement of the Executives with the business of the Company, including without limitation, the integration of the Company with its own business and the development of business development and strategic opportunities for the Business, is important to the performance of the Company after the acquisition of the Company by the Offeror. Stanley has no current intention of terminating either Executive.

AND WHEREAS under the system, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Amended and Restated Employment Agreements were made for reasons other than to increase the value of the consideration paid to the Executives for the Shares owned by them and that the entering into such agreements is authorized.

DATED February 27th, 2004.

Daniel Laurion
Le Surintendant de l’encadrement des marchés de valeurs