

Court of Appeal File No. C57884
Superior Court File No. CV-11-9283-00CL

ONTARIO COURT OF APPEAL

**THE HONOURABLE
MR. JUSTICE SHARPE**

**THE HONOURABLE
MADAM JUSTICE GILLESE**

**THE HONOURABLE
MR. JUSTICE HOURIGAN**

THURSDAY, THE 10TH DAY

OF JULY, 2014

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS, INC.**

ORDER

THIS APPEAL, made by the Appellant/Respondent on Cross-Appeal, Unique Broadband Systems, Inc. ("**UBS**"), and this Cross-Appeal, made by the Respondents/Cross-Appellants, Gerald McGoey ("**McGoey**") and Jolian Investments Ltd. ("**Jolian**"), for an order varying the Judgment of The Honorable Madam Justice Mesbur of the Superior Court of Justice, dated May 21, 2013 (the "**Judgment**"), was heard on June 17, 2014 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, reserved and disposed of by Reasons released on this date.

ON READING the Appeal Book and Compendium of the Appellant, the Compendium of the Respondents/Cross-Appellants, the Responding Compendium of the Appellant/Respondent on Cross-Appeal, the transcript of evidence of the Proof of Claim Trial, the facts and brief of authorities of the Appellant/Respondent on Cross-Appeal and the Respondents/Cross-Appellants, filed, and upon hearing the submissions of counsel,

1. **THIS COURT ORDERS** that the Appeal is granted.
2. **THIS COURT FURTHER ORDERS** that the Cross-Appeal is dismissed.
3. **THIS COURT FURTHER ORDERS** that paragraph 2 of the Judgment shall be substituted with: McGoey's actions constitute "Cause" and a "Jolian Default" under the Jolian Management Services Agreement.
4. **THIS COURT FURTHER ORDERS** that paragraph 3 of the Judgment shall be set aside.
5. **THIS COURT FURTHER ORDERS** that paragraph 4 of the Judgment shall be substituted with: Jolian/McGoey are not entitled to the Enhanced Severance.
6. **THIS COURT FURTHER ORDERS** that UBS is entitled to costs of the Trial. The parties may attend before the Trial Judge to fix the costs if the parties cannot agree on the scale and/or quantum of the costs.

7. **THIS COURT FURTHER ORDERS** that the Respondents/Cross-Appellants shall pay UBS costs of the Appeal and Cross-Appeal fixed in the amount of \$60,000, inclusive of fees, disbursements and HST. Jolian and McGoey are jointly and severally liable to UBS for the costs of the Appeal and Cross-Appeal.

This Order bears interest at the rate of 3.0% per year from its date.



D. MURPHY

REGISTRAR COURT OF APPEAL FOR ONTARIO

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

 JUL 30 2014

PER / PAR:

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**ONTARIO
COURT OF APPEAL**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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