



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Paramount (Re), 2020 ONSEC 7
Date: 2020-03-05

**IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION, SILVERFERN SECURED
MORTGAGE FUND, SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND, GTA PRIVATE CAPITAL INCOME LIMITED
PARTNERSHIP, SILVERFERN GP INC., PARAMOUNT ALTERNATIVE CAPITAL
CORPORATION, PACC AINSLIE CORPORATION, PACC COSTIGAN CORPORATION,
PACC CRYSTALLINA CORPORATION, PACC DACEY CORPORATION, PACC GOULAIS
CORPORATION, PACC HARRIET CORPORATION, PACC MAJOR MACK
CORPORATION, PACC MAPLE CORPORATION, PACC MULCASTER CORPORATION,
PACC REGENT CORPORATION, PACC SCUGOG CORPORATION, PACC SEHEL
CORPORATION, PACC SHAVER CORPORATION, PACC SIMCOE CORPORATION,
PACC THOROLD CORPORATION, PACC WILSON CORPORATION, TRILOGY
MORTGAGE GROUP INC., TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,
MARC RUTTENBERG, RONALD BRADLEY BURDON and MATTHEW LAVERTY**

**REASONS FOR DECISION ON A MOTION TO ADJOURN
(Rule 29 of the Ontario Securities Commission *Rules of Procedure and Forms*
(2019) 42 OSCB 9714)**

Hearing: March 2, 2020

Decision: March 5, 2020

Panel: Timothy Moseley Vice-Chair and Chair of the Panel
Garnet W. Fenn Commissioner
Heather Zordel Commissioner

Appearances: Mark Bailey For Staff of the Ontario Securities
Vivian Lee Commission

No one appearing on behalf of the
Respondents

REASONS FOR DECISION

I. OVERVIEW

- [1] The merits hearing in this proceeding was scheduled to begin on March 2, 2020. When preparing for the hearing, Staff of the Ontario Securities Commission discovered an inadvertent omission in the Amended Statement of Allegations. Staff had neglected to seek an order requiring that the three individual respondents (Ronald Bradley Burdon, Matthew Lavery and Marc Ruttenberg) disgorge to the Commission any amounts that they had obtained as a result of non-compliance with Ontario securities law.
- [2] Staff wanted to amend the Statement of Allegations to add that request. Staff's ability to do so is impeded by its uncertainty as to whether it has a valid address at which it can serve the motion materials on Mr. Ruttenberg.
- [3] Two business days before the merits hearing was to begin (*i.e.*, on February 27, 2020), Staff filed a motion seeking:
 - a. an order further amending the Amended Statement of Allegations to add the request for a disgorgement order;
 - b. an adjournment of the commencement of the merits hearing from March 2, 2020, to March 23, 2020 (which would give Staff time to find and serve Mr. Ruttenberg); and
 - c. such further orders as the Commission considers appropriate.
- [4] On March 2, 2020, the day the merits hearing was scheduled to begin, no one appeared for any of the respondents. After hearing submissions from Staff, we gave an oral decision. We decided not to proceed further that day. We ordered that on March 10, 2020, we would hear Staff's motion to amend the Amended Statement of Allegations, and then begin the merits hearing. We advised that our reasons for that decision would follow. These are our reasons.

II. HISTORY OF THE PROCEEDING

- [5] Staff filed its original Statement of Allegations on March 29, 2019, and a Notice of Hearing was issued on the same date. Staff filed an Amended Statement of Allegations on May 24, 2019.
- [6] At an attendance on October 9, 2019, the Commission ordered that the merits hearing take place over 14 days, beginning on March 2, 2020, and ending on March 30, 2020.
- [7] Mr. Lavery is the only respondent who has indicated an intention to participate in the merits hearing. He has advised that his availability to do so is significantly limited by his current employment. His work schedule permits him to attend on March 26, 2020, one of the scheduled hearing days, and on that day he intends to testify on his own behalf.

III. ANALYSIS

A. Issues

[8] Staff's motion presents two issues, which we address in turn:

- a. Should Staff be permitted to amend the Amended Statement of Allegations to add a request for a disgorgement order?
- b. Should the commencement of the merits hearing be adjourned to permit Staff to attempt to serve Mr. Ruttenberg with the motion materials?

B. Should Staff be permitted to amend the Amended Statement of Allegations to add a request for a disgorgement order?

[9] Pursuant to Rule 18 of the *Ontario Securities Commission Rules of Procedure and Forms*¹ (the **Rules**), Staff may amend a Statement of Allegations at any time with permission from a panel. The panel "shall grant permission unless the amendment would be unfairly prejudicial to a Party".

[10] We must therefore determine whether Staff's requested amendment would cause the individual respondents unfair prejudice. We ought not to make that determination without first giving the individual respondents an opportunity to address that question, if they wish to do so.

[11] The *Ontario Securities Commission Practice Guideline*² (the **Practice Guideline**) dictates how much notice the individual respondents must receive so that they can decide whether to respond. Section 8(1)(a) of the Practice Guideline requires that a moving party serve and file motion materials at least 10 days before a motion date.

[12] Staff advised that it served the motion materials on Messrs. Burdon and Lavery on February 27, 2020. Accordingly, we were not prepared to hear the motion to amend any earlier than March 9, 2020, being 10 days after service on Messrs. Burdon and Lavery.

[13] We therefore decided to adjourn the hearing of that motion. The question remained as to the length of the adjournment. The answer to that question is inextricably bound up in Staff's request to adjourn the merits hearing. We turn now to consider that request.

C. Should the commencement of the merits hearing be adjourned to permit Staff to attempt to serve Mr. Ruttenberg with the motion materials?

[14] Rule 29(1) of the Rules provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment." The standard set out in Rule 29(1) is a "high bar"³ that reflects the important objective set out in Rule 1, that Commission proceedings be conducted in an expeditious manner.

¹ (2019) 42 OSCB 9714

² (2019) 42 OSCB 9736

³ *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28

- [15] To determine whether the circumstances cited by Staff are “exceptional”, such that they require an adjournment of the merits hearing, we must ask: What prompts the adjournment request?
- [16] The answer is: Staff’s inadvertent omission of a disgorgement order in the list of requested sanctions.
- [17] At the hearing of this motion, Staff submitted instead that what necessitates an adjournment is the respondents’ right to make full answer and defence.⁴ That right is an important consideration, but it is not the root cause. Any need the respondents might have to rethink their defence (or their choice not to defend) arises only as a direct consequence of Staff’s request to amend. Staff cannot lower the high bar it faces in seeking an adjournment to remedy its own error, by invoking procedural fairness for the respondents.
- [18] That leads us to the question of whether Staff’s error, and Staff’s interest in fixing that error, constitute exceptional circumstances. We cannot find that they are. If we were to reach that conclusion, the door would be wide open to Staff and respondents alike to seek adjournments based on claims of inadvertent omissions. That result would seriously undermine one of the objectives of Rule 29(1), *i.e.*, to ensure that hearings proceed expeditiously.
- [19] Staff’s requested adjournment would require either the postponing of Mr. Laverty’s testimony, or the less satisfactory alternative of having Mr. Laverty testify before Staff concludes its case. It might also require the scheduling of additional hearing days, thus delaying the conclusion of the merits hearing.
- [20] While we were therefore not prepared to adjourn the commencement of the merits hearing to March 23, Staff did advise that it could complete its case in six days. This commitment by Staff (which may be subject to a change in circumstances) enabled us to:
- a. vacate the next two hearing days, being March 5 and 9, 2020;
 - b. schedule the hearing of Staff’s motion to amend for March 10, 2020, thereby satisfying the notice requirement for Messrs. Burdon and Laverty;
 - c. plan to commence the merits hearing on March 10, 2020, to continue on March 11, 12, 23, 24 and 25, 2020, by which time Staff should have completed its case;
 - d. plan to continue the merits hearing on March 26, 2020, on which day Mr. Laverty is scheduled to testify on his own behalf; and
 - e. preserve the remaining merits hearing dates of March 27 and 30, 2020.
- [21] In our view, that combination of outcomes constitutes exceptional circumstances. In general, adjournments of merits hearings are resisted because they disrupt existing plans, consume resources unnecessarily, and/or (and often most significantly) delay the conclusion of the merits hearing. It is an exception when an adjournment effects no appreciable disruption. That is the case here, because:
- a. there will be no change to Mr. Laverty’s plans to testify on March 26, 2020;

⁴ See *Cheng (Re)*, 2018 ONSEC 13, (2018) 41 OSCB 2359 at para 6

- b. Staff expects to complete its case before Mr. Lavery testifies; and
- c. the conclusion of the merits hearing will not be delayed.

[22] We acknowledge that Staff may find itself in a different position with respect to Mr. Ruttenberg than it does with respect to Messrs. Burdon and Lavery, depending on whether Staff has any success locating Mr. Ruttenberg or an address for him. Our decision is without prejudice to any request Staff might make for further relief arising out of developments involving Mr. Ruttenberg that occur after the hearing of this motion.

IV. CONCLUSION

[23] Absent any developments warranting a further order, Staff's motion to amend the Amended Statement of Allegations will be heard on March 10, 2020, followed immediately by the commencement of the merits hearing.

Dated at Toronto this 5th day of March, 2020.

"Timothy Moseley"
Timothy Moseley

"Garnet W. Fenn"
Garnet W. Fenn

"Heather Zordel"
Heather Zordel