

Court File No. CV-21-00672880-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BAO YING CAO and 13364097 CANADA INC.

Applicants

and

XIAODONG YANG and USERS OF SUNRISE TECHNOLOGY

Respondents

FACTUM OF THE APPLICANTS

December 3, 2021

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TO: **XIAODONG YANG**

Respondent

AND TO: **USERS OF SUNRISE TECHNOLOGY**

Respondents

FACTUM OF THE APPLICANTS

PART I - INTRODUCTION

1. The applicants Bao Ying Cao and 13364097 Canada Inc. (“**133**”) seek an interpleader order to pay to a receiver all amounts presently held in their bank accounts that are sourced from the respondent Users of Sunrise Technology (the “**Contested Funds**”). The applicants are the innocent holders of approximately \$1.3 million worth of Contested Funds as a result of a scheme directed by a person calling himself Xiaodong Yang. Ms. Cao now understands that this scheme was a fraud.

2. This scheme involved the respondent Users of Sunrise Technology sending funds to the applicants’ bank accounts under false pretenses. The applicants now seek to identify, account for, and distribute the Contested Funds back to those entitled to them with the assistance of BDO Canada Limited as receiver.

PART II - SUMMARY OF FACTS

3. Ms. Cao is a commercially unsophisticated individual who was duped into participating in a scheme operated by the respondent Mr. Yang. Ms. Cao now believes this scheme to have been fraudulent, though she did not know this at the time.¹

4. Ms. Cao met Mr. Yang after she replied to his online job advertisement in July 2021. Mr. Yang told Cao that he operated a cryptocurrency trading platform called Sunrise Technology.

¹ Affidavit of Bao Ying Cao, at paras. 2, 26, Application Record, Tab 2.

Mr. Yang explained to Ms. Cao that he needed her assistance to receive Sunrise Technology user funds into her bank accounts, purchase USDT (a form of cryptocurrency) with these funds, and then send the USDT back to him to distribute to Sunrise Technology users. Mr. Yang offered to pay Ms. Cao a 5% commission for each transaction she processed.²

5. As Ms. Cao had no experience in business or cryptocurrency, she did not understand anything Mr. Yang asked her to do to be improper or unusual. Further Mr. Yang did not ask her to contribute any personal funds, so she did not believe Mr. Yang's enterprise to be fraudulent or unlawful.³ In August, Ms. Cao began to perform the above procedure. Mr. Yang also gave Ms. Cao a daily list of customers to whom she needed to e-transfer funds. He told her that these funds were either refunds or payments for USDT that had been traded on the Sunrise Technology application. Ms. Cao complied with Mr. Yang's instructions.⁴

6. In August and September, the volume of transactions that Ms. Cao processed exceeded the daily e-transfer limits on her personal bank accounts. Mr. Yang instructed Ms. Cao to open further bank accounts so that she could process more transactions. Ultimately, Ms. Cao used six bank accounts and two alternative payment methods to facilitate the transactions:⁵

- (a) two existing personal bank accounts at HSBC and Scotiabank;
- (b) two existing PayPal accounts;

² Affidavit of Bao Ying Cao, at paras. 3-4, Application Record, Tab 2.

³ Affidavit of Bao Ying Cao, at para. 10, Application Record, Tab 2.

⁴ Affidavit of Bao Ying Cao, at para. 11, Application Record, Tab 2.

⁵ Affidavit of Bao Ying Cao, at paras. 12-16, and Appendix "A", Application Record, Tab 2.

- (c) a personal account at CIBC opened August 31, 2021;
- (d) a business account at CIBC opened September 23, 2021 under the name of the applicant 13364097 Canada Inc., a business which Cao incorporated for this purpose;
- (e) an EQ Bank Canada account opened September 10, 2021, whose purpose was to purchase USDT;
- (f) a personal account at RBC opened September 28, 2021; and
- (g) a Wise Payments Canada Inc. money transfer account, opened September 28, 2021.

7. Mr. Yang also told Ms. Cao when to withdraw her 5% commission. Although Ms. Cao separated these amounts from other customer funds, she does not believe that she depleted the funds. On a single occasion, she transferred approximately \$21,000 of the monies designated as “commissions” to a separate RBC account, but when she learned that Mr. Yang’s operation was fraudulent, she transferred the full amount back to her HSBC account. The result is that Ms. Cao’s RBC account contains no Contested funds.⁶

8. To summarize, Ms. Cao undertook the following actions at Mr. Yang’s instruction:

- (a) Received customer funds into her Scotiabank, HSBC, CIBC Personal, CIBC Business, and PayPal accounts;

⁶ Affidavit of Bao Ying Cao, at para. 18, Application Record, Tab 2.

- (b) Transferred some customer funds back to customers using her Scotiabank, HSBC, CIBC Personal, CIBC Business, EQ, Wise, and PayPal accounts;
- (c) Purchased USDT from traders on Binance and transferred the USDT to Mr. Yang;
- (d) Transferred “commissions” to her HSBC and CIBC Savings accounts.⁷

9. In October, Ms. Cao became alarmed at the volume of funds that were flowing into her bank accounts and became suspicious of the legitimacy of Mr. Yang’s business. On October 5, 2021, Ms. Cao sought legal advice from a local lawyer. After several discussions with various Ontario-based counsel, Ms. Cao retained Polley Faith LLP on October 26, 2021. After this point, Ms. Cao did not process any more Sunrise Technology transactions and did not further communicate with Mr. Yang.⁸

10. Shortly after being retained, Polley Faith LLP determined that Mr. Yang’s operation was likely a fraudulent Ponzi scheme, and advised Ms. Cao of its conclusions. Contrary to what Mr. Yang told Ms. Cao about the operation, Sunrise Technology was advertised to the public as a mobile application that allowed users to earn “commissions” by placing false e-commerce orders. In order to place these orders, users had to first “load money” onto the application, which they did by sending Ms. Cao, and possibly others, email money transfers. Sunrise Technology was likely designed to entice users to make small payments to receive small returns, which

⁷ Affidavit of Bao Ying Cao, at para. 19, Application Record, Tab 2.

⁸ Affidavit of Bao Ying Cao, at paras. 20-23, Application Record, Tab 2.

would result in users eventually making larger investments that Mr. Yang had no intention to repay.⁹

11. Sunrise Technology is clearly a fraud, demonstrated by a number of red flags:¹⁰

- (a) Mr. Yang received proceeds of his scheme via a type of cryptocurrency called USDT which Mr. Yang told Sunrise Technology users and Ms. Cao to send to his “imToken digital wallet”. This use of cryptocurrency made the transactions more difficult to trace;
- (b) The Sunrise Technology website (sunrise-tech.ca) represented itself as a subsidiary of Omnicom Group, an international communications company with revenues of \$15 billion. Omnicom has confirmed that this is false and has taken steps to remove the Sunrise Technology website;
- (c) All funds paid as part of the Sunrise Technology scheme were moved through unsophisticated methods such as e-transfer and PayPal, and the application itself communicated with its customers through unsophisticated and untraceable methods such as WhatsApp;
- (d) Mr. Yang recruited Ms. Cao to work on Sunrise Technology on an online Chinese-Canadian forum called yorkbbs.ca. Mr. Yang did not inquire into Mr. Cao’s qualifications and immediately involved her in all aspects of the operation.

⁹ Affidavit of Bao Ying Cao, at para. 26, Application Record, Tab 2.

¹⁰ Affidavit of Jeffrey Wang (December 3, 2021), at para. 9, Application Record, Tab 3.

As his operation expanded, Mr. Yang posted similar ads of yorkbbs.ca and other Chinese-Canadian forums looking for additional help;

- (e) Mr. Yang never appeared on camera with Ms. Cao and has only ever communicated with her via encrypted messaging applications such as “WhatsApp” and “WeChat”;
- (f) Many users of Sunrise Technology have reported that the application is fraudulent. Reviews of the Sunrise Technology application reveal that many users have had difficulty withdrawing their commissions and could not get back the money that they had loaded onto the application;
- (g) Customers have emailed Polley Faith LLP (counsel for the applicants) stating that they have lost money to Sunrise Technology by sending e-transfers to other recipient accounts not associated with Ms. Cao; and
- (h) Mr. Yang has failed to assert any legitimate ownership or rights to his business of the money held by Ms. Yang, and Ms. Cao is no longer able to contact him on WhatsApp or WeChat.

12. The applicants have accrued approximately \$1.3 million in Sunrise Technology user funds. Other than the \$152,588.00 in USDT that Ms. Cao sent to Mr. Yang at his instruction, the applicants do not believe that they have depleted any of the Contested Funds, including the 5%

commission that Mr. Yang originally promised Ms. Cao. The applicants have reported this fraud to the York Regional Police and have fully cooperated with law enforcement.¹¹

13. Since Ms. Cao stopped processing transactions, the Sunrise Technology application has stopped allowing further user cash withdrawals. This has caused many customers to contact Ms. Cao directly through her email to demand the return of their funds. Some customers have also attended at her family's residence, whose address is listed on the incorporation documents of 133.¹²

14. Due to the complexity and volume of the transactions and the number of accounts and platforms used, Ms. Cao is unable to determine how and to whom she should returned the customers funds. A detailed accounting is required, which is why Ms. Cao seeks the assistance of this Court.¹³

15. The applicants' counsel has been in contact with the York Regional Police and Michael Fawcett, the Crown Counsel assigned to this case. Mr. Fawcett has agreed that this civil interpleader order and the appointment of a receiver is the best way to distribute customers funds back to the entitled respondents, as opposed to a criminal forfeiture action.¹⁴

¹¹ Affidavit of Bao Ying Cao, at paras. 29-30, Application Record, Tab 2.

¹² Affidavit of Bao Ying Cao, at paras. 28, Application Record, Tab 2.

¹³ Affidavit of Bao Ying Cao, at paras. 31, Application Record, Tab 2.

¹⁴ Affidavit of Jeffrey Wang (December 3, 2021), at para. 12, Application Record, Tab 3.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

Interpleader order

16. The applicants seek an interpleader order directing the Contested Funds be transferred to BDO Canada Limited as a receiver. The requirements of an interpleader order are set out in Rule 43.¹⁵

17. The purpose of the interpleader Rule is to permit an uninterested, third party, who holds property that is the subject of a dispute between multiple other parties, to relieve him or herself of the risk and expense of holding the disputed property and allow the persons between whom the dispute really exists to settle it at their expense.¹⁶ This helps avoid a multiplicity of suits, and assists applicants who want to discharge their legal obligations but do not know how.¹⁷

18. The Rules define “property” as including personal debt, and state that “each person who makes a claim in respect of the property” is a “claimant”.¹⁸ In this case, the claimants are the users of the Sunrise Technology application, and possibly Mr. Yang. Since Ms. Cao has stopped communicating with Mr. Yang and transacting with the users of Sunrise Technology, many users of Sunrise Technology have emailed Ms. Cao to demand the return of the money that they had loaded onto the Sunrise Technology platform. Some users are also asking for further commission withdrawals form Sunrise Technology.¹⁹ Mr. Yang has also repeatedly messaged and called Ms.

¹⁵ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, at r. 43.

¹⁶ *Chemainus First Nation v. Bullock Baur Association Ltd.*, 2012 BCSC 479, at para. 46, citing *Evans v. Wright*, 12 L.T. 77 (U.K.C.A.), at 78; see also *Clarkson Co. v. Hamilton (City)*, [1972] O.R. 762 (Ont. S.C.), at para. 8.

¹⁷ *Derry Smith Frank LLP v. Fingold*, 2021 ONSC 2762, at para. 27.

¹⁸ Rules 43.01(1) and (2).

¹⁹ Affidavit of Bao Ying Cao, at para 28, Application Record, Tab 2.

Cao, and threatened that customers will take police action against her. While he has not explicitly requested any money from her, he may make such a claim in the future.²⁰

19. Rule 43.02(1) provides as follows:

Person Claiming No Beneficial Interest

43.02 (1) A person may seek an interpleader order (Form 43A) in respect of property if,

- (a) two or more other persons have made adverse claims in respect of the property; and
- (b) the first-named person,
 - (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and
 - (ii) is willing to deposit the property with the court or dispose of it as the court directs.

20. The Ontario Superior Court of Justice recently held that to be competing claims, the claims must (a) pertain to the same subject matter, (b) be mutually exclusive, and (c) the applicant must face an actual dilemma as to how to act.²¹ All these conditions are met here. As Ms. Cao transferred some of the money paid to her by users of Sunrise Technology money to Mr. Yang before she realized Mr. Yang was perpetrating a fraud, there is not enough money left for all of them. This renders their claims “adverse” in respect of the property. Due to the complex accounting that will be required to determine whom is owed what, Ms. Cao is unable to determine how to repay the funds.²²

²⁰ Affidavit of Bao Ying Cao, at para 25, Application Record, Tab 2.

²¹ [*Devry Smith Frank LLP v. Fingold*](#), 2021 ONSC 2762, at para. 28.

²² Affidavit of Bao Ying Cao, at paras. 31, Application Record, Tab 2.

21. Ms. Cao has affirmed that she claims no beneficial interest in the property. She is an innocent pawn in Mr. Yang's scheme – which she now understands to have been a fraud – and she is committed to returning the Contested Funds to the respondents ultimately determined to be entitled to them in whatever manner is directed by this Court.²³

22. It is not necessary for any of the claimants to have actually filed competing claims to the Contested Funds nor is it necessary for this Court to be satisfied that the competing claims are valid or likely to succeed. While the applicants have reason to believe that the scheme Mr. Yang directed was fraudulent,²⁴ this Court need not be convinced of that at this stage. Rather, “[t]he applicant is only required to demonstrate that there is a real foundation for the expectation of competing claims”.²⁵

23. Rule 43.04(1) sets out the powers of the court upon hearing an interpleader application:

43.04 (1) On the hearing of an application or motion for an interpleader order, the court may,

(a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;

(b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds is extinguished; and

(c) order that the costs of the applicant or moving party be paid out of the property or its proceeds.

(2) In an order under subrule (1), the court may,

[...]

²³ Affidavit of Bao Ying Cao, at para 30, Application Record, Tab 2.

²⁴ Affidavit of Jeffrey Wang (December 3, 2021), at para. 9, Application Record, Tab 3.

²⁵ [*Canadian Imperial Bank of Commerce v. Costodian Inc. et al*](#), 2018 ONSC 6680, at para. 26.

(g) make such other order as is just.

24. Pursuant to these Rules, the applicants seek a variety of orders, set out in the Draft Order included in the Application Record.²⁶ These orders fall into the following broad categories:

- (a) The appointment of BDO as a receiver and the transfer of the Contested Funds to BDO
- (b) Costs to be paid out of the Contested Funds
- (c) Extinguishment of the applicants' liability in respect of the Contested Funds

Appointment of BDO as receiver and transfer of Contested Funds to BDO

25. A receiver is an officer of the court,²⁷ so this Court may appoint BDO Canada Limited as receiver and order the applicants to transfer the Contested Funds to BDO Canada Limited pursuant to Rule 43.04(1)(a). In *McArthur v. Washagamis Bay Investment Corp*, the Ontario Superior Court of Justice appointed Deloitte and Touche Inc. as receiver and ordered them to receive funds that were the subject of an interpleader order.²⁸

26. This Court has authority to appoint BDO as receiver pursuant to the Courts of Justice Act, s. 101, and the *Rules of Civil Procedure*, Rule 41.²⁹

²⁶ Draft Order, Application Record, Tab 5.

²⁷ *Business Development Bank of Canada v. Aventura II Properties Inc.*, 2016 ONCA 300, at para. 25.

²⁸ *McArthur v. Washagamis Bay Investment Corp*, 2003 CanLII 41700 (Ont. S.C.), at paras. 5-9.

²⁹ *Courts of Justice Act*, R.S.O. 1990 c. C43, at s. 101; *Rules of Civil Procedure*, R.R.O. 1990, reg. 194, Rule 41.

Costs to be paid out of Contested Funds

27. The applicants seek an order allowing their reasonable legal costs to be paid out of the Contested Funds. This Court has the authority to do that pursuant to Rule 43.04(1)(c). Ms. Cao is an innocent party who was used in a scheme she did not understand. She had no experience in cryptocurrency prior to her involvement with Mr. Yang, and trusted that what he was instructing her to do was legitimate.³⁰ As an assistant to a real estate broker, Ms. Cao is not in a good position to finance this application and will suffer financially if she is required to pay the legal fees herself.³¹

28. Ms. Cao's decision to bring this matter to the attention of the police and voluntarily relinquish the funds as per the directions of this Court benefits the respondent users of Sunrise Technology because it facilitates the efficient and equitable distribution of the Contested Funds back to them. It is fair that the respondents should bear a *pro rata* share of the legal fees required to return their funds to them, as opposed to Ms. Cao bearing the entire burden herself.

29. BDO Canada Limited should also be entitled to take its reasonable fees out of the Contested Funds, because sifting through the financial records required to determine which claimant is owed what amount will be labour intensive. BDO Canada Limited cannot be expected to do this work for free. It is fair that the claimants should bear a *pro rata* share of the cost required to return their funds to them equitably and efficiently.

³⁰ Affidavit of Bao Ying Cao, at para 10, Application Record, Tab 2.

³¹ Affidavit of Bao Ying Cao, at para 32, Application Record, Tab 2.

Extinguishment of applicants' liability in respect of Contested Funds

30. Pursuant to Rule 43.04(1)(b), this Court has the authority to extinguish the liability of the applicants upon their compliance with the Order of this Court. Ms. Cao's participation in Mr. Yang's scheme was inadvertent, and she extricated herself from that scheme as soon as she became aware of it. Should this Court order her and 133 to transfer the Contested Funds to BDO Canada Limited, Ms. Cao – having chosen to come forward and bring this application for the benefit of the victims of the fraud – should be entitled to have her liability in respect of those funds extinguished.

31. An interpleader order's purpose is to allow the interpleader to extricate herself from a dispute that is not hers, over property that is not hers. In particular, the applicants should not be liable for any portion of the contested funds this Court allows BDO Canada Limited, counsel to BDO Canada Limited, or counsel to the applicants to take as its reasonable fees.

PART IV - ORDER REQUESTED

32. The applicants seek an order appointing BDO Canada Limited as Receiver and directing the Contested Funds to be transferred to BDO Canada Limited, as particularized in the Draft Order found in the application record at Tab 5. The applicants also seek reimbursement for their legal costs from the Contested Funds and an extinguishment of liability pursuant to Rule 43.04(1)(b).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of December, 2021.

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SCHEDULE “A”

LIST OF AUTHORITIES

1. [*Business Development Bank of Canada v. Aventura II Properties Inc.*](#), 2016 ONCA 300
2. [*Canadian Imperial Bank of Commerce v. Costodian Inc. et al.*](#), 2018 ONSC 6680
3. [*Chemainus First Nation v. Bullock Baur Association Ltd.*](#), 2012 BCSC 479
4. [*Clarkson Co. v. Hamilton \(City\)*](#), [1972] 3 O.R. 762 (Ont. S.C.)
5. [*Devry Smith Frank LLP v. Fingold*](#), 2021 ONSC 2762
6. [*McArthur v. Washgamis Bay Investment Corp.*](#), 2003 CanLII 41700 (Ont. S.C.)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Courts of Justice Act*, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

2. *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194

RULE 41 APPOINTMENT OF RECEIVER

Definition

41.01 In rules 41.02 to 41.06,

"receiver" means a receiver or receiver and manager. R.R.O. 1990, Reg. 194, r. 41.01.

How Obtained

41.02 The appointment of a receiver under section 101 of the *Courts of Justice Act* may be obtained on motion to a judge in a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 41.02.

Form of Order

41.03 An order appointing a receiver shall,

- (a) name the person appointed or refer that issue in accordance with Rule 54;
- (b) specify the amount and terms of the security, if any, to be furnished by the receiver for the proper performance of the receiver's duties, or refer that issue in accordance with Rule 54;
- (c) state whether the receiver is also appointed as manager and, if necessary, define the scope of the receiver's managerial powers; and
- (d) contain such directions and impose such terms as are just. R.R.O. 1990, Reg. 194, r. 41.03.

Reference of Conduct of Receivership

41.04 An order appointing a receiver may refer the conduct of all or part of the receivership in accordance with Rule 54. R.R.O. 1990, Reg. 194, r. 41.04.

Directions

41.05 A receiver may obtain directions at any time on motion to a judge, unless there has been a reference of the conduct of the receivership, in which case the motion shall be made to the referee. R.R.O. 1990, Reg. 194, r. 41.05.

Discharge

41.06 A receiver may be discharged only by the order of a judge. R.R.O. 1990, Reg. 194, r. 41.06.

[...]

RULE 43 INTERPLEADER

General

Definition

43.01 (1) In rules 43.02 to 43.04,

“property” means personal property and includes a debt. O. Reg. 42/05, s. 3.

Claimants

(2) For the purposes of rules 43.02 to 43.04, the following persons are claimants:

1. In the case of an application or motion for an interpleader order under subrule 43.02 (1), each person who makes a claim in respect of the property.
2. In the case of an application or motion for an interpleader order under subrule 43.02 (2),
 - i. the judgment debtor against whom the enforcement process has been filed,
 - ii. every creditor who has filed with the sheriff an enforcement process against the judgment debtor, and
 - iii. each person who makes a claim in respect of the property. O. Reg. 42/05, s. 3.

Where Available

Person Claiming No Beneficial Interest

43.02 (1) A person may seek an interpleader order (Form 43A) in respect of property if,

- (a) two or more other persons have made adverse claims in respect of the property; and
- (b) the first-named person,
 - (i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and
 - (ii) is willing to deposit the property with the court or dispose of it as the court directs. O. Reg. 42/05, s. 3.

Claims Under Rule 60.13

(2) A claimant who is entitled to do so under subrule 60.13 (4) or (5) may seek an interpleader order (Form 43A). O. Reg. 42/05, s. 3.

How Obtained

Application or Motion under Subrule 43.02 (1)

43.03 (1) The following requirements apply when a person seeks an interpleader order under subrule 43.02 (1):

1. If no proceeding has been commenced in respect of the property, the person shall make an application naming the claimants as respondents.
2. If a proceeding has been commenced in respect of the property, the person shall make a motion in the proceeding on notice to the claimants.
3. The notice of application or notice of motion shall require the claimants to attend the hearing to substantiate their claims.
4. The application or motion shall be supported by an affidavit identifying the property, containing the names and addresses of every claimant of whom the deponent has knowledge, and stating that the applicant or moving party,
 - i. claims no beneficial interest in the property, other than a lien for costs, fees or expenses,
 - ii. does not collude with any of the claimants, and
 - iii. is willing to deposit the property with the court or dispose of it as the court directs. O. Reg. 42/05, s. 3.

Motion under Subrule 43.02 (2)

(2) The following requirements apply when a claimant seeks an interpleader order under subrule 43.02 (2):

1. The claimant shall make a motion, on notice to the other claimants, in the proceeding in which the writ of execution was issued against the debtor.
2. The notice of motion shall require the other claimants to attend the hearing to substantiate their claims. O. Reg. 42/05, s. 3.

Disposition

Powers of Court

43.04 (1) On the hearing of an application or motion for an interpleader order, the court may,

- (a) order that the applicant or moving party deposit the property with an officer of the court, sell it as the court directs or, in the case of money, pay it into court to await the outcome of a specified proceeding;
- (b) declare that, on compliance with an order under clause (a), the liability of the applicant or moving party in respect of the property or its proceeds is extinguished; and
- (c) order that the costs of the applicant or moving party be paid out of the property or its proceeds. O. Reg. 42/05, s. 3.

(2) In an order under subrule (1), the court may,

- (a) order a claimant to be made a party to a proceeding already commenced in substitution for or in addition to the moving party;
- (b) order the trial of an issue between the claimants, define the issue to be tried and direct which claimant is to be plaintiff and which defendant;
- (c) where the question is one of law and the facts are not in dispute, decide the question without directing the trial of an issue;
- (d) on the request of a claimant, determine the rights of the claimants in a summary manner, if, having regard to the value of the property and the nature of the issues in dispute, it seems desirable to do so;
- (e) where a claimant fails to attend the hearing, or attends and fails to comply with an order made in the course of the proceeding, make an order declaring that the claimant and all persons claiming under the claimant are forever barred from making a claim against the applicant or moving party and all persons claiming under the applicant or moving party, without affecting the rights of the claimants as between themselves;
- (f) stay any further step in a proceeding in respect of the property; and

(g) make such other order as is just. O. Reg. 42/05, s. 3.

Certain Motions to be Heard by Judge

(3) A motion for an interpleader order that is made to an associate judge and raises a genuine issue of fact or of law shall be adjourned to be heard by a judge. O. Reg. 42/05, s. 3; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15

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PROCEEDING COMMENCED AT
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