

COUNSEL SLIP

COURT FILE

NO.: CV-21-00662471-00CL

DATE: April 11, 2022

NO. ON LIST 1

TITLE OF
PROCEEDING

Matta et al. v. Altmore Mortgage Investment Corporation

COUNSEL FOR: Monica Matta & Mark Amello

PLAINTIFF(S)

APPLICANT(S) Michael Carlson

PETITIONER(S)

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Interim Receiver, BDO Canada Limited - Peter Crawley
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Endorsement:

By Order dated November 8, 2021 (the "Receivership Order") BDO Canada Limited was appointed as receiver (the "Receiver") over the assets, undertakings and properties of Altmore Mortgage Investment Corporation ("Altmore"), Altmore Capital Inc. ("ACI"), Independent Mortgage Advisors Inc. ("IMAI") and Ian Ross McSevney pursuant to s. 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended.

The Receiver brings this motion for an order declaring that Mr. McSevney is in contempt of the Receivership Order and for costs of this motion on a full indemnity basis. If the declaration request is made, the Receiver seeks a date for a hearing to determine the appropriate penalty.

This motion for a contempt order against Mr. McSevney was scheduled for a hearing today at a scheduling hearing before Justice Conway on February 1, 2022. The scheduling hearing was conducted by Zoom. Mr. McSevney attended the hearing. He was, therefore, personally notified of the date of this hearing for a contempt order.

In her endorsement dated February 1, 2022, Justice Conway confirmed that Mr. McSevney was present and that she told him that a contempt motion is a very serious one that is quasi-criminal in nature. Justice Conway wrote that she urged Mr. McSevney to seek legal advice and to contact the Law Society of Ontario to seek *pro bono* assistance if he is otherwise unable to retain counsel.

Mr. McSevney did not join the hearing today which was also conducted by Zoom.

Analysis

Altmore was incorporated on July 30, 2012. Mr. McSevney is the sole guiding mind behind Altmore and its affiliates. Altmore claimed to operate as a mortgage investment corporation and solicited several millions of dollars in investment capital from investors ostensibly for the purpose of investing in a portfolio mortgages. The Receiver is not aware of any mortgage investments actually made by Altmore.

Rule 60.05 of the *Rules of Civil Procedure* provides that an order requiring a person to do any act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under rule 60.11. Rule 60.11(1) of the Rules provides that a contempt order to enforce an order requiring the person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on a motion to a judge in a proceeding in which the order to be enforced was made. Rule 60.11(2) of the Rules provides that the notice of motion shall be served personally on the person against whom a contempt order sought, and not by an alternative to personal service, unless the court orders otherwise.

I am satisfied that Mr. McSevney had actual notice of this hearing date for a motion for a contempt order and that, with this knowledge, he chose not to join the hearing. In these circumstances, I make an order validating service of the Notice of Motion and Motion Record in accordance with Rule 60.11(2).

Contempt proceedings typically have two stages: (a) the liability hearing; and (b) the penalty hearing. This is the liability hearing.

Civil contempt has three elements which must be proven beyond a reasonable doubt. These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of a contempt finding ensue only in appropriate cases. See *Carey v. Laiken*, 2015 SCC 17, at paras. 32.

The first element is that the order alleged to have been breached must state clearly and unequivocally what should and should not be done. The second element is that the party alleged to have breached the order must have had actual knowledge of it. Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. See *Carey* at paras. 33-35.

With respect to the first element, the Receivership Order clearly and unequivocally states what must be done.

Paragraphs 5 through 8 of the Receivership Order provide:

5. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, government bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, and being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that McSevney is hereby directed to provide the following to the Receiver forthwith, and in any event within three (3) days of the date of this Order:

- (a) An accounting of receipts and disbursements made by Altmore including, in particular, information related to transfers to Christie Briyer Ward-McSevney, Elaine McSevney and any other non-arm's length party;
- (b) A list of all mortgages or other investments in which any of the Debtors holds or previously held an interest, and any related documents in McSevney's possession or control;
- (c) A list of all investors in Altmore, as well as contact information, amounts invested and copies of all related agreements and other documents; and
- (d) Any books and records of Altmore or any other Debtor in McSevney's possession or control.

With respect to the second element, the Receiver has proven beyond a reasonable doubt that Mr. McSevney had actual personal knowledge of the Receivership Order. By email dated November 8, 2021 from Peter Crawley (a representative of the Receiver) to Mr. McSevney (at an email address that Mr. McSevney has used to communicate with the Receiver), the Receiver attached the Receivership Order. The Receiver attached its information requests in respect of Altmore, ACI, IMAI and Mr. McSevney personally.

By email dated November 12, 2021, Mr. McSevney responded to Mr. Crawley. In this email, Mr. McSevney states: "I am going to be replying and sending you some information regarding the transactions you have indicated". Mr. McSevney goes on to state that he is unable to access the banking records since control of the accounts was taken away. Mr. McSevney states in the last sentence of his email: "I will endeavour to collect records and comment further on the transactions you have noted". Mr. McSevney has not provided any further information to the Receiver.

Mr. McSevney has failed to comply with the Receivership order in the following respects:

- (a) Mr. McSevney has not advised the Receiver of the existence of any Property (defined in the Receivership Order) or provided the Receiver with access to such Property.
- (b) Mr. McSevney has failed to advise the Receiver of the existence of Records (as defined in the Receivership Order) in his possession or control or provided the Receiver with copies of or access to such Records.
- (c) Mr. McSevney has failed to provide the Receiver with an accounting of receipts and disbursements made by Altmore including in relation to transfers to any non-arm's length party, or a list of all mortgages or other investments in which he or any other Debtors (as defined in the Receivership Order) holds or previously held an interest.
- (d) Mr. McSevney has failed to provide the Receiver with assistance in connection with the bankruptcy assignments of Mr. McSevney and Altmore. Mr. McSevney failed to provide information in relation to their statements of affairs. He failed to attend a first meetings of creditors on December 7, 2021 in respect of his bankruptcy and Altmore's bankruptcy. Mr. McSevney failed to advise the Trustee in Bankruptcy of his assets and liabilities. He failed to disclose receipt of rental payments in respect of property that was registered in

his names of Mr. McSevney and his spouse, Christie Ward-McSevney at Unit 17, 81 Valridge Drive, Ancaster, Ontario as described in the Third Report of the Receiver at paras. 35-37.

I am satisfied that the Receiver has proven beyond a reasonable doubt that Mr. McSevney has intentionally acted or failed to act in compliance with the Receivership Order.

For these reasons, I make an Order declaring that Mr. McSevney is declared to be in breach of the Receivership Order.

I direct that a hearing as to the applicable penalty for this finding of contempt be scheduled for May 3, 2022 at 12:00 p.m.

Costs of this motion are awarded to the Receiver on a full indemnity scale.

Order to issue in form of Order signed by me today.