EXHIBIT “36”

To the Receiver’s Seventh Report to Court Dated January 14, 2019

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 12, 2018 6:19 PM
To: Van de Mosselaer, Randal
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

Randal, we are now back at where we started. You just made we waste half my day sending notices to people about my application.

To reiterate, the Receiver does not have any claim under Titan because Richard failed to bring the claim within the limitation act. The Receivership has no authority over trust property - see receivership order. Yamauchi order gives me a remedial trust allowing me to trace my funds. So we are not interfering, you say we are. Hence why the matter was set down on the commercial list. You adjourned that application telling me that the receiver had no interest in our claim, now you change your mind. Therefore, we need to deal with this issue without any further delays. I got rid of Richard because of this nonsense. I do not have time for games.

I am asking nicely please reactivate Richard's application that you just adjourned. I have been trying to deal with this issue for 3 years. I am past my point of patience. Set it down on the commercial list for no later than January 31, 2019. Give us notice and we will attend and speak to the issue. Please advise.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 12, 2018 4:45 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
Subject: Winch et ux. v. Ballard et al., Action No. 1701-12992

Mike,

Thanks for your email (below).

The question you raise is a fair one and has caused the Receiver to revisit its position on the attached application (the "Winch Application").

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 12, 2018 6:50 PM
To: Van de Mosselaer, Randal
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

Okay that is fine. The issues are interrelated so we can be dealt with them at the same time and that was the plan with Richard. Our position is straight forward, we oppose the receiver from doing a Titan on the basis that it has no right due to Yamauchi order, the receiver order and the limitation act. Once that is resolved then I can proceed with my claims and applications. remember, I have sued 140 parties and advised all them not to file a SOD until we resolve this issue. If the Receiver is right then my claims are moot. We will deal with it in front of Justice Romaine. Please send particulars of the attendance so our team can organize and Jeffrey Oliver will attend to speak to the issue on our behalf.

Randal we are on the same team. I have not screwed over the receiver. Do not push me.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 12, 2018 6:39 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
Subject: Re: Winch et ux. v. Ballard et al., Action No. 1701-12992

Mike,

I have listened carefully. You will recall that your inquiry was with respect to your application in the Winch action. I replied to your inquiry in my email below. Unfortunately you seem to be confused between the application that you and Mr Winch have brought (on the one hand) and an application that the Receiver may bring (on the other). Your initial inquiry was only in respect of the former, and we have advised as to our position. With respect to the latter, I reiterate that I take my instructions from the Receiver, not (with all due respect) from you. I can advise that we are in the process of filing an application for January 23 in front of Justice Romaine on the Commercial List for (amongst other things) advice and directions with respect to the Receiver's conducting a Titan calculation. You may expect to receive that application tomorrow.

Lewis, David

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 14, 2018 2:59 PM
To: Mike Terrigno
Cc: Lewis, David; Paplawski, Emily; Shellon, Jacqueline; Oliver, Jeffrey; Christopher Souster
Subject: [EXT] RE: DEFAMATION NOTICE

Mike,

In reply to your email:

- We will not be sending the letter you have demanded below. The November 28 letter specifically says that one of the reasons for the adjournment of the December 14 application date was that the Receiver needed to change counsel;
- As you should know, the Receiver is a Court-appointed Receiver, and as such the appointment will continue until the Receiver is discharged by the Court. Similarly, the distribution and use of estate resources is entirely within the control of the Court. As a result, estate funds will be distributed in the manner directed by the Court;
- We are more than happy to communicate with you, but in light of the threats of lawsuits that you have leveled, it would be inappropriate for us to communicate with you by telephone. Accordingly, we are happy to communicate with you via email, or through counsel.

Regards,

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

osler.com

From: Mike Terrigno <mike@terrigno.ca>
Sent: Friday, December 14, 2018 12:30 PM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Cc: Lewis, David <dlewis@bdo.ca>
Subject: RE: DEFAMATION NOTICE

I have just learned that the letter came from BDO. Why the hell is BDO sending that letter out to investors? David make sure that the letter does not get posted on the BDO website – Base finance portal.

I want a clarifying letter sent out to investors the gist of which is as follows:

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 14, 2018 3:32 PM
To: Van de Mosselaer, Randal
Cc: Lewis, David; Paplawski, Emily; Shellon, Jacqueline; Oliver, Jeffrey; Christopher Souster
Subject: [EXT] Base File

I received your application. I believe the application will deal with my current concerns.
It seems to me that resolving the issues in your application is the last step required of the receiver. Thereafter, the receiver should start winding down and assign any remaining interests to whichever investor wants them. If this is correct then I will adjust steps I had planned to allow the receiver to complete it final tasks. Please advise.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 14, 2018 2:59 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Lewis, David <dlewis@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>; Shellon, Jacqueline <jshellon@bdo.ca>; Oliver, Jeffrey <joliver@casselsbrock.com>; Christopher Souster <cmas@riversidelawoffice.ca>
Subject: RE: DEFAMATION NOTICE

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- We are more than happy to communicate with you, but in light of the threats of lawsuits that you have leveled, it would be inappropriate for us to communicate with you by telephone. Accordingly, we are happy to communicate with you via email, or through counsel.

Regards,

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 14, 2018 12:30 PM
To: Van de Mosselaer, Randal
Cc: Lewis, David
Subject: [EXT] RE: DEFAMATION NOTICE

I have just learned that the letter came from BDO. Why the hell is BDO sending that letter out to investors? David make sure that the letter does not get posted on the BDO website – Base finance portal.

I want a clarifying letter sent out to investors the gist of which is as follows:

The letter that was sent out should be clarified in that it was not Mike Terrigno who caused delays in having the application or this matter proceed. The adjournment and the delays in this matter proceeding resulted from Richard Billington being removed as the receiver's lawyer that occurred for the following reasons:

1) There may have been a real or perceived conflict in him further acting in this matter.
2) He may have been negligent in his services which is currently under investigation by the receiver for purposes of a claim against him.
3) He misrepresented material facts to the investors and to BDO.

The letter should also advise of the date and time of the next investor meeting the purpose of which is to take a vote for whether the receivership should be dismantled.

It is time that investors learn the truth. This receivership is over! And make sure not one single penny is removed from the bank account before all my fees are paid because I was told many things by the receiver and if those turn out to be untrue then I will be filing a claim for every single penny to be recovered that I spent getting things done for investors unlike the receiver who just screwed investors. In case you did not know, I was the one who discovered the ponzi scheme although the ASC was on the hunt too but I put an end to it by getting the receivership order. I was the one who found every single asset that the receiver enforced on. I was the one who found every single conspirator. I was the one who hired the Texas lawyer and investigator to find out it was all BS in Texas. It was me! And you are now trying to screw me over!

I want a teleconference with you and David within 24 hours.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 14, 2018 11:46 AM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Oliver, Jeffrey <joliver@casselsbrock.com>; Paplawski, Emily <EPaplawski@osler.com>; Shellon, Jacqueline <jshellon@bdo.ca>
Subject: FW: DEFAMATION NOTICE
Importance: High

Mike,

Firstly, section 13 of the Defamation Act applies (as per section 12) "only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in that newspaper or broadcast from that station."

Secondly, now that I understand specifically what you are upset about in my November 28 letter, I can advise that I had thought that this sentence was doing nothing more than repeating the advice that you gave to the Receiver in your November 2, 2018 email (attached) in which you advised that "Justice Eamons recuses himself on my matters". Even reviewing it now, that would seem to be the case.

That being said, I'm not interested in making a mountain out of a molehill. If there's some language that you would like us to circulate by way of "retraction" or explanation that would satisfy you, please let me know and we will consider it.

Regards,

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

osler.com

From: Mike Terrigno <mike@terrigno.ca>
Sent: Friday, December 14, 2018 10:58 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>; Lewis, David <dlewis@bdo.ca>
Subject: DEFAMATION NOTICE
Importance: High

Randal acknowledge that you accept service of the attached notice, otherwise I am sending in my process server to serve you personally at work as personal service is required under the Defamation Act.

I am not sure how I am going to proceed with this. But I am giving you notice as I am required to under the Defamation Act and as advised by my lawyers.

I was fielding calls last night from my relatives and other investors over your letter and everyone who read it understood it in a view of disdain. I do not appreciate you making me the scape goat. Consider telling investors the truth.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 13, 2018 9:45 PM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>; Lewis, David <dlewis@bdo.ca>
Subject: Base finance

.

Randal u dumb fuk monkey.. you send out another letter referring to me as u did on the attached letter without speaking to me first you my friend better go speak to a priest..... i am going to look at this for defmamation.. what you wrote is misleading and cast me in a negative shadow.. . why didnt you tell the investors why the application was reallly adjourned and richard is gone i.e. he was in conflict, negligent and lied to investors.. instead u make me the scape goat..

U piece of shit that was sent to over 200 people including my relatives who are asking what this is about and making me look bad.... david i told u to get ur dog in check.. this is my last notice one more screw up and im shutting down ur cash cow..

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)](sent by mobile phone)

Lewis, David

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 14, 2018 11:46 AM
To: Mike Terrigno
Cc: Christopher Souster; Lewis, David; Oliver, Jeffrey; Paplawski, Emily; Shellon, Jacqueline
Subject: [EXT] FW: DEFAMATION NOTICE
Attachments: FW: [EXT] RE: Easy Loan Corporation and Mike Terrigno v. Base Mortgage & Investments Ltd., et al. - Court File No. 1501-11817; Defamation Notice Dec 2018 Randal.pdf

Importance: High

Mike,

Firstly, section 13 of the Defamation Act applies (as per section 12) "only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in that newspaper or broadcast from that station."

Secondly, now that I understand specifically what you are upset about in my November 28 letter, I can advise that I had thought that this sentence was doing nothing more than repeating the advice that you gave to the Receiver in your November 2, 2018 email (attached) in which you advised that "Justice Eamons recuses himself on my matters". Even reviewing it now, that would seem to be the case.

That being said, I'm not interested in making a mountain out of a molehill. If there's some language that you would like us to circulate by way of "retraction" or explanation that would satisfy you, please let me know and we will consider it.

Regards,

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

osler.com

From: Mike Terrigno <mike@terrigno.ca>
Sent: Friday, December 14, 2018 10:58 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>; Lewis, David <dlewis@bdo.ca>
Subject: DEFAMATION NOTICE
Importance: High

DEFAMATION ACT

NOTICE UNDER S. 13

To: Randal Van de Mosselaer

This is notice to you under s. 13 of the *Defamation Act*, RSA 2000 c. D-7.

Mike Terrigno hereby gives you notice of its intention to bring an action under the *Defamation Act* as against you.

The defamatory publication complained of includes without limitation the following:

1. Your letter to investors of Base Finance Ltd. dated November 28, 2018 (the "Letter") in which you write the following:

   We understand that Justice Eamon (who is the assigned commercial list Justice on December 14th) has previously indicated that he is unable to hear any matters involving Mr. Terrigno (one of the Plaintiffs in the Receivership Action).

Your publication to investors of Base Finance Ltd. is misleading, offensive and without merit. The fact is that the application that is the subject of the Letter was adjourned because Richard Billington was fired as Receiver's lawyer because he was in conflict, negligent and lied to both the investors of Base Finance and BDO. Instead you portray that I am the cause of the delays casting me in a negative shadow, odium and contempt by investors of Base Finance Ltd.

This notice is served in the same manner as a Statement of Claim.

December 14, 2018

Mike Terrigno

Lewis, David

From: Lewis, David <dlewis@bdo.ca>
Sent: November 16, 2018 9:38 AM
To: Van de Mosselaer, Randal; Paplawski, Emily
Subject: FW: [EXT] RE: Easy Loan Corporation and Mike Terrigno v. Base Mortgage & Investments Ltd., et al. - Court File No. 1501-11817

FYI

David Lewis, CPA, CIRP, Licensed Insolvency Trustee
Vice President
BDO Canada Limited

dlewis@bdo.ca

616, 10216-124 Street
Edmonton, Alberta T5N 4A3
Canada
Tel: 780-441-2155
Fax: 780-424-3222

From: Mike Terrigno <mike@terrigno.ca>
Sent: November 2, 2018 2:36 PM
To: Melanie Pedersen <MPedersen@billingtonbarristers.com>; Christopher Souster <cmas@riversidelawoffice.ca>; Fryzuk, Craig <CFryzuk@bdo.ca>; Lewis, David <dlewis@bdo.ca>
Cc: Richard Billington <RBillington@billingtonbarristers.com>
Subject: [EXT] RE: Easy Loan Corporation and Mike Terrigno v. Base Mortgage & Investments Ltd., et al. - Court File No. 1501-11817

Justice Eamons recuses himself on my matters. Having had prior notice of the suggested Justice and hearing date to ensure it fit our team's schedule would have relieved this error.

Sincerely yours,

Mike Terrigno *(MBA. LL.B/J.D., REM (Harvard), CICA (tax)*

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 13, 2018 9:45 PM
To: Van de Mosselaer, Randal; Lewis, David
Subject: [EXT] Base finance
Attachments: Doc - Dec 13 2018 - 11-06 PM.pdf

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Randal u dumb fuk monkey.. you send out another letter referring to me as u did on the attached letter without speaking to me first you my friend better go speak to a priest..... i am going to look at this for defmamation.. what you wrote is misleading and cast me in a negative shadow.. . why didnt you tell the investors why the application was reallly adjourned and richard is gone i.e. he was in conflict, negligent and lied to investors.. instead u make me the scape goat..

U piece of shit that was sent to over 200 people including my relatives who are asking what this is about and making me look bad.... david i told u to get ur dog in check.. this is my last notice one more screw up and im shutting down ur cash cow..

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)](sent by mobile phone)

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
403.260.7000 MAIN
403.260.7024 FACSIMILE

OSLER

Calgary
Toronto
Montréal
Ottawa
Vancouver
New York

November 28, 2018

Randal Van de Mosselaer
Direct Dial: 403.260.7060
rvandemosselaer@osler.com
Our Matter Number: 1196307

Sent By Electronic Mail (CommercialCoordinator.QBCalgary@albertacourts.ca)

Commercial Coordinator
Court of Queen's Bench of Alberta - Calgary
Calgary Courts Centre
601 - 5th Street SW
Calgary, AB T2P 5P7

Attention: Brent Dufault

Dear Sir:

Re: Mike Terrigno and Easy Loan Corporation v. Base Mortgage & Investments Ltd. et al., Action No. 1501 11817 (the "Receivership Action")

We have recently been retained as counsel to BDO Canada Limited, in its capacity as the Court-appointed Receiver of Base Mortgage & Investments Ltd. and Base Finance Ltd. (the "Receiver") in the Receivership Action. We write in relation to the application of the Receiver (the "Application") currently scheduled on the commercial list before the Honourable Mr. Justice Eamon on December 14, 2018 at 10:30 a.m. in the Receivership Action. We enclose a copy of the Application herewith for your reference.

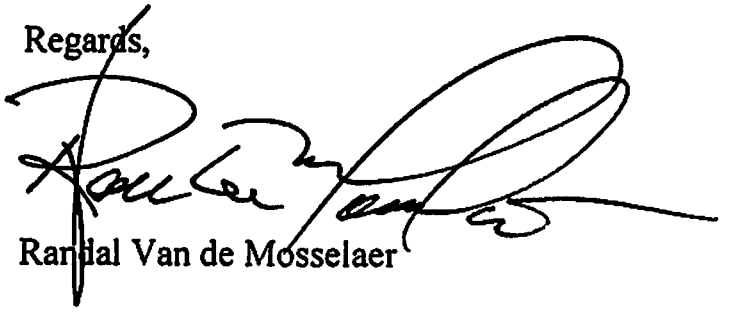
We write to request that the Application be adjourned *sine die*. There are a number of reasons for this request. We have only very recently been retained as counsel for the Receiver and will not be in a position to proceed on the currently scheduled date. Further, we understand that as a result of various issues which have arisen in the matter over the past number of weeks (including the need to change counsel) the Receiver will not be in a position to provide the Court with copies of materials in support of its application sufficiently prior to the December 14th date. Lastly, we understand that Justice Eamon (who is the assigned commercial list Justice on December 14th) has previously indicated that he is unable to hear any matters involving Mr. Terrigno (one of the Plaintiffs in the Receivership Action). Based on the foregoing, we would ask that the application be adjourned *sine die* and the time currently reserved for the Application be released.

We can advise as well that we understand that Mr. Terrigno has filed an application in Court of Queen's Bench Action No. 1701-12992 which he had intended to speak to at the December 14th return date of the Application, but that he has already adjourned that application and agrees with the December 14th time being released.

We apologize for any inconvenience and appreciate your understanding and assistance in this matter.

If you have any questions or require further information, please do not hesitate to contact me at the above noted email or telephone number.

Regards,



Randal Van de Mosselaer

RSV:ep
Enclosure

c: Service List

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 12, 2018 7:15 PM
To: Van de Mosselaer, Randal
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

David get a control of your dog because if he does something stupid then we will have a big problem. and after what Janman did to you, I am the only investor that is still on side. You lose me and this receivership is over!

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 12, 2018 7:10 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
Subject: Re: Winch et ux. v. Ballard et al., Action No. 1701-12992

Thanks. Another exhibit.

Randal Van de Mosselaer
M : 403-862-5588

On Dec 12, 2018, at 7:08 PM, Mike Terrigno <mike@terrigno.ca> wrote:

> You think that is a threat... you fuking sissy. David where did you find this sissy.
>
> Sincerely yours,
> Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]
>
>

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 12, 2018 7:09 PM
To: Van de Mosselaer, Randal
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

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Mike - threats are not appropriate and will be brought to the attention of the court.

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M : 403-862-5588

On Dec 12, 2018, at 6:49 PM, Mike Terrigno <mike@terrigno.ca> wrote:

> Okay that is fine. The issues are interrelated so we can be dealt with them at the same time and that was the plan with Richard. Our position is straight forward, we oppose the receiver from doing a Titan on the basis that it has no right due to Yamauchi order, the receiver order and the limitation act. Once that is resolved then I can proceed with my claims and applications. remember, I have sued 140 parties and advised all them not to file a SOD until we resolve this issue. If the Receiver is right then my claims are moot. We will deal with it in front of Justice Romaine. Please send particulars of the attendance so our team can organize and Jeffrey Oliver will attend to speak to the issue on our behalf.
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> Randal we are on the same team. I have not screwed over the receiver. Do not push me.

Lewis, David

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Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] Re: Winch et ux. v. Ballard et al., Action No. 1701-12992

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Randal Van de Mosselaer
M : 403-862-5588

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>
> **From:** Van de Mosselaer, Randal <rvandemosselaer@osler.com>
> **Sent:** December 12, 2018 6:39 PM
> **To:** Mike Terrigno <mike@terrigno.ca>
> **Cc:** Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
> **Subject:** Re: Winch et ux. v. Ballard et al., Action No. 1701-12992
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> Mike,

Lewis, David

From: Mike Terrigno <mike@terrigno.ca>
Sent: December 12, 2018 6:50 PM
To: Van de Mosselaer, Randal
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

Okay that is fine. The issues are interrelated so we can be dealt with them at the same time and that was the plan with Richard. Our position is straight forward, we oppose the receiver from doing a Titan on the basis that it has no right due to Yamauchi order, the receiver order and the limitation act. Once that is resolved then I can proceed with my claims and applications. remember, I have sued 140 parties and advised all them not to file a SOD until we resolve this issue. If the Receiver is right then my claims are moot. We will deal with it in front of Justice Romaine. Please send particulars of the attendance so our team can organize and Jeffrey Oliver will attend to speak to the issue on our behalf.

Randal we are on the same team. I have not screwed over the receiver. Do not push me.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 12, 2018 6:39 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
Subject: Re: Winch et ux. v. Ballard et al., Action No. 1701-12992

Mike,

I have listened carefully. You will recall that your inquiry was with respect to your application in the Winch action. I replied to your inquiry in my email below. Unfortunately you seem to be confused between the application that you and Mr Winch have brought (on the one hand) and an application that the Receiver may bring (on the other). Your initial inquiry was only in respect of the former, and we have advised as to our position. With respect to the latter, I reiterate that I take my instructions from the Receiver, not (with all due respect) from you. I can advise that we are in the process of filing an application for January 23 in front of Justice Romaine on the Commercial List for (amongst other things) advice and directions with respect to the Receiver's conducting a Titan calculation. You may expect to receive that application tomorrow.

Lewis, David

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Sent: December 12, 2018 6:39 PM
To: Mike Terrigno
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Subject: [EXT] Re: Winch et ux. v. Ballard et al., Action No. 1701-12992

David Lewis and Jacqueline Shellon.

Randal Van de Mosselaer
M : 403-862-5588

On Dec 12, 2018, at 6:34 PM, Mike Terrigno <mike@terrigno.ca> wrote:

> Randal who at BDO is instructing you?
>
> Sincerely yours,
> Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]
>
>
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> **From:** Van de Mosselaer, Randal <rvandemosselaer@osler.com>
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> **Cc:** Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
> **Subject:** Re: Winch et ux. v. Ballard et al., Action No. 1701-12992
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Sent: December 12, 2018 6:32 PM
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Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

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> I am asking nicely please reactivate Richard's application that you just adjourned. I have been trying to deal with this issue for 3 years. I am past my point of patience. Set it down on the commercial list for no later than January 31, 2019. Give us notice and we will attend and speak to the issue. Please advise.
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Sent: December 12, 2018 4:45 PM
To: Mike Terrigno <mike@terrigno.ca>
Cc: Christopher Souster <cmas@riversidelawoffice.ca>; Lewis, David <dlewis@bdo.ca>; Shellon, Jacqueline <jshellon@bdo.ca>; Paplawski, Emily <EPaplawski@osler.com>
Subject: Winch et ux. v. Ballard et al., Action No. 1701-12992

Mike,

Thanks for your email (below).

The question you raise is a fair one and has caused the Receiver to revisit its position on the attached application (the "Winch Application").

Lewis, David

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: December 12, 2018 4:45 PM
To: Mike Terrigno
Cc: Christopher Souster; Lewis, David; Shellon, Jacqueline; Paplawski, Emily
Subject: [EXT] Winch et ux. v. Ballard et al., Action No. 1701-12992
Attachments: Application Oct-10-18.PDF; BDO v. Dorais 2015abca137.PDF

Mike,

Thanks for your email (below).

The question you raise is a fair one and has caused the Receiver to revisit its position on the attached application (the "Winch Application").

Firstly, we believe that that there are serious procedural difficulties with the Winch Application. It appears (based on our review of the documents which are available to us) that a Statement of Claim was filed by Mr. Winch naming only Darrell Winch as a Plaintiff. Then, on August 13, 2018 the Statement of Claim was amended to indicate that you have "an interest" in the funds invested by Darrell Winch (although the nature of that interest is not made clear) (the "Winch Claim"). I cannot tell if Statements of Defence were ever filed (and if they were, I would be grateful if you could provide a copy) but the Winch Application (which was filed on October 10, 2018) appears to be a summary judgment application (although this is not from a review of the application itself).

None of this would be any concern to the Receiver but for the fact that it appears that the Winch Claim and the Winch Application are attempting to interfere with "Property" (as that term is defined in the Receivership Order) which belongs to the estate. Having now reviewed the Amended Statement of Claim, the Application filed October 10, 2018, and Affidavit of Darrell Winch sworn September 10, 2018 in support of the Winch Application, it is now clear that the Winch Claim and Winch Application are attempting to recover funds and pursue claims which properly belong to the estate and the general body of creditors. Our specific concerns in this regard are as follows:

- It is clear from the Court's decision in *Re Titan Limited Partnership*, 2005 ABQB 637 that the results of a "Titan" claim (which includes claims advanced pursuant to the *Fraudulent Preferences Act*, RSA 2000, c. F-24 ("FPA"), which is explicitly the basis of the Winch Claim and Winch Application) are claims which belong to the company/estate;
- As a result, it is our view that Mr. Winch's efforts to recover any funds as he is purporting to do under the Winch Claim offend the stay granted in paragraphs 9 and 10 of the Receivership Order. Those paragraphs provide, respectively, that "no proceedings in respect of . . . the Property shall be commenced" and "all rights and remedies . . . affecting the Property, are hereby stayed . . ." The funds against which the Winch Claim is advanced are, in our view, part of the "Property" within the meaning of the Receivership Order, and hence the Winch Claim and Winch Application are caught by this stay;
- The Receiver is currently considering its options with respect to a Titan-style calculation and recovery of funds paid out under the Base ponzi scheme. Indeed, the Receiver anticipates bringing an application for advice and directions in this regard in the near future;
- In any event, it is clear that claims such as the Winch Claim which are advanced under the FPA are not claims just for the benefit of the Plaintiff advancing the claim, but are rather a claim for all affected creditors. We would refer you to the recent Court of Appeal decision in *BDO Canada Limited v. Dorais*, 2015 ABCA 137 (attached) in which the Court notes (at para. 12) that: "Actions under the statute are brought on behalf of all creditors, not just the one prosecuting the action . . . A declaration that one of the respondents holds property

under a constructive trust would likewise accrue to the advantage of all the potential beneficiaries of that trust, which would be the general body of creditors."

Accordingly, it is the Receiver's considered view that the claim being advanced in the Winch Claim is improper in that: (a) these are claims which belong to the estate and not to Mr. Winch, (b) the Winch Claim offends the stay imposed by the Receivership Order, and (c) claims of the nature advanced in the Winch Claim are to be advanced not simply on behalf of the individual Plaintiff, but are to be advanced on behalf of the general body of creditors. As a result, if the Winch Application is to proceed we would anticipate receiving instructions to appear on behalf of the Receiver to advise the Court of the foregoing. We would accordingly ask that you keep us advised if the Winch Application is set down for a hearing, as well as any other steps and developments in the Winch Claim.

Regards,

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1

osler.com

From: Mike Terrigno <mike@terrigno.ca>
Sent: Tuesday, December 11, 2018 9:31 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>; Christopher Souster <cmas@riversidelawoffice.ca>
Subject: RE: Winch et ux. v. Ballard et al., Action No. 1701-12992

Randal, I need to clarify your email which is captioned below for your ease of reference.. are you saying that the Receiver will not be undertaking a claw back of the Base Finance bank account(s) or what we have been referring to as a "Titan procedure".. We will be asked this question by the Court so we need to be able to answer it. Thank you.

Sincerely yours,
Mike Terrigno [MBA, LL.B/J.D., REM (Harvard) CICA (tax)]

In the Court of Appeal of Alberta

Citation: BDO Canada Limited v Dorais, 2015 ABCA 137

Date: 20150414
Docket: 1403-0277-AC
Registry: Edmonton

Between:

BDO Canada Limited

Appellant
(Plaintiff/Applicant)

- and -

Shauna Lee Dorais

Respondent
(Defendant/Respondent)

- and -

Grant Dewar

Respondent
(Defendant/Respondent)

The Court:

The Honourable Mr. Justice Peter Costigan
The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Myra Bielby

Memorandum of Judgment

Appeal from the Order by
The Honourable Mr. Justice D.R.G. Thomas
Dated the 24th day of October, 2014
(2014 ABQB 331, Docket: BK03 115588)

Memorandum of Judgment

The Court:

[1] The issue on this appeal is whether a trustee in bankruptcy can take over the prosecution of actions started by individual creditors, and pursue them on behalf of the bankrupt estate.

Facts

[2] At present the litigation has not proceeded beyond the pleadings stage, so many of the key alleged facts have not been proven. However, for the purposes of this appeal, the facts as pleaded can be presumed to be true.

[3] The deceased Michel Dorais and a number of companies previously controlled by him (the Dorais companies) have been adjudged bankrupt. When they were still operating, they solicited funds from investors, which they represented would be invested in real estate and mortgages. A number of those investors allege that they made their investments based on negligent or fraudulent misrepresentations.

[4] At one point the Dorais companies purchased a significant amount of life insurance on the life of Michel Dorais. It is alleged that the policies or their proceeds were improperly diverted to Shauna Dorais or one creditor, Grant Dewar. They then received the proceeds of the insurance when Michel Dorais died. It is also alleged that real estate was bought using funds of the Dorais companies, but was placed in the name of Shauna Dorais.

[5] Two groups of creditors (the Havelock plaintiffs and the Metz plaintiffs) commenced actions seeking personal remedies including rescission of their investment contracts, and damages. They also alleged a fraudulent preference in the transfer of an insurance policy to Grant Dewar, and alleged that property (including the proceeds of insurance policies) in the name of Shauna Dorais is impressed with a constructive trust.

[6] Michel Dorais died in June 2009, and a receiver was appointed for many of the Dorais companies in August, 2009. In May 2011, the receiver commenced an action alleging fraudulent preferences with respect to the dealings in the insurance policies. The respondents take the position that this statement of claim was never served, and there are now perceived to be limitation problems with respect to any new action by the Trustee in bankruptcy. In December 2011, the Havelock, Metz, and receiver's actions were stayed during case management, and the receiver was directed to assign Michel Dorais' estate and the Dorais companies into bankruptcy. The Trustee was appointed in January, 2012.

[7] In early 2014 the Havelock plaintiffs and the Metz plaintiffs assigned their actions to the Trustee, who proposed to prosecute them on behalf of the bankrupt estates. The Trustee applied

to lift the stays that had been imposed during case management in December 2011. The case management judge agreed with the respondents Shauna Dorais and Grant Dewar that a trustee in bankruptcy has no capacity to prosecute claims of individual creditors: ***BDO Canada Ltd. v Dorais***, 2014 ABQB 331. Since he concluded that the Havelock and the Metz claims were essentially personal, the case management judge was not prepared to lift the stays.

Capacity of the Trustee in Bankruptcy

[8] Trustees in bankruptcy are creatures of statute, and they derive their powers from the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3. Of particular importance are sections 30 and 72:

> 30(1) The trustee may, with the permission of the inspectors, do all or any of the following things:
>
> (d) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
>
> . . .
>
> 72(1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

The case law establishes that a trustee may pursue claims on behalf of the bankrupt estate, but may not pursue the claims of individual creditors: ***Toyota Canada Inc. v Imperial Richmond Holdings Ltd.*** (1997), 202 AR 274 at para. 20, 54 Alta LR (3d) 183; ***Principal Group Ltd. (Bankrupt) v Principal Savings and Trust Co.*** (1990), 111 AR 81 at para. 14, 80 CBR (NS) 313 affm'd (1992), 3 Alta LR (3d) 123, 12 CBR (3d) 257 (CA); ***Principal Group Ltd. (Bankrupt) and Valan v Alberta*** (1993), 139 AR 26 at para. 10, 8 Alta LR (3d) 73. Personal claims do not "relate to the property of the bankrupt" under s. 30(1)(d).

[9] The appellant Trustee does not dispute that it cannot pursue the claims of individual creditors. It argues, however, that claims for fraudulent preferences are advanced on behalf of all the creditors, not just any individual plaintiff creditor. The respondents concede that a trustee in bankruptcy does have the capacity to prosecute fraudulent preference claims on behalf of the bankrupt estate.

[10] The Havelock and Metz claims clearly have a strong personal component. Those plaintiffs allege misrepresentations to themselves personally, investments that they made in

reliance on those misrepresentations, and resulting personal loss. They seek rescission of their individual investment contracts, and damages for their own personal losses. The Trustee in bankruptcy concedes that it cannot pursue those claims on their behalf.

[11] The Havelock and Metz claims, however, also contain collective components:

> (a) They plead that one of the insurance policies was assigned to Dewar at a time when the assignor was insolvent, and specifically plead the *Fraudulent Preferences Act*, RSA 2000, c. F-24.
>
> (b) They plead that (i) funds of the bankrupt companies were used to purchase property for the respondent Shauna Dorais, (ii) funds of the bankrupt company were used to purchase life insurance that accrued to the benefit of Shauna Dorais, and (iii) there is a constructive trust over the insurance proceeds received by Shauna Dorais.

The Trustee in bankruptcy argues that these types of collective claims accrue to the benefit of all the creditors, and not just the individual named plaintiffs. It argues that the case management judge should have lifted the stay with respect to these collective components of the Havelock and Metz actions, even if he properly declined to lift the stay on the personal components of those actions.

[12] Section 10(1) of the *Fraudulent Preferences Act* provides:

> 10(1) One or more creditors may, for the benefit of creditors generally or for the benefit of those creditors who have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of, or to have declared void, agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or noncompliance with this Act or by this Act declared void.

Actions under the statute are brought on behalf of all creditors, not just the one prosecuting the action: *Convoy Supply Alberta Ltd. v Apex Insulation 1996 Ltd.*, 2003 ABQB 1 at paras. 30, 33-4. A declaration that one of the respondents holds property under a constructive trust would likewise accrue to the advantage of all the potential beneficiaries of that trust, which would be the general body of creditors: *Leard (Re)* (1995), 30 CBR (3d) 312 at para. 5 (Ont HC).

[13] One of the core duties of a trustee in bankruptcy is to gather in the assets of the bankrupt. The Havelock and Metz claims seek, in part, declarations that certain transfers of assets from the bankrupts to the respondents are void. If those claims are successful, those assets would revert back to the original owner, not to the individual plaintiffs seeking the declaration. Neither the Havelock nor the Metz plaintiffs would receive any preferential payment or treatment. If the respondents do in fact hold property in trust for one or more of the bankrupt companies, the Trustee has a duty to attempt to recover it. Prosecuting these types of claims on behalf of the

general body of creditors is consistent with the Trustee's overall duties. In that respect he is pursuing legitimate claims of the estates, and is not impermissibly "stepping into the shoes" of individual plaintiffs.

[14] Since it is conceded that the Trustee in bankruptcy can pursue fraudulent preference claims on behalf of the bankrupt estates, the essential issue is whether the collective components of the Havelock and Metz claims can be pursued independently. In other words, is it possible to lift the stay on the Havelock and Metz actions, but only with respect to these collective claims? There is no doubt that the Court can, in an appropriate case, stay an action in whole, or only in part: R. 1.4(2)(h) provides that the Court may stay all or any part of an action. There is therefore no procedural impediment to allowing the Trustee to pursue only the collective components of the actions.

[15] The case management judge concluded that the Trustee did not have the legal capacity to pursue the Havelock and Metz actions because they were personal claims, and the Trustee would be "stepping into the shoes of the plaintiffs". That would only be true to the extent that the Trustee was authorized to pursue the personal components of those claims, as opposed to the collective fraudulent preference and constructive trust claims. If the order lifting the stay is properly crafted, the prohibition against the Trustee pursuing personal claims will not be violated.

[16] The respondents argue, in the alternative, that a trustee in bankruptcy has no capacity to take an assignment of an existing cause of action. They argue that s. 30(1)(d) only allows a trustee to "bring, institute or defend any action", which does not include taking an assignment of an existing action. Section 30(1)(d) should, however, be read in light of the provisions of s. 72, which confirm that a trustee is entitled to avail itself of all rights and remedies provided by the general law. Those rights and remedies include the general right to take assignments, as well as the right to take advantage of any ordinary procedures allowed at law. There are sound public policy reasons for preventing a trustee from pursuing personal claims on behalf of individual creditors, but there are no equivalent policy reasons for artificially limiting the procedural options open to a trustee in fulfilling its core obligation of bringing in the assets of the bankrupt.

[17] In summary, the Trustee has the legal capacity to take an assignment of the collective components of the Havelock and Metz actions, and the stay on those actions should have been partially lifted to allow the Trustee to pursue them against the two respondents.

Other Issues

[18] The respondents advanced several reasons why the stay of the Havelock and Metz actions should not be lifted. The case management judge concluded that the Trustee did not have the capacity to take the assignments of those actions under s. 30(1)(d), and accordingly did not deal with the other issues. Counsel for the respondents argued that those remaining issues should be referred back to the case management judge. There has, however, already been

considerable delay in the prosecution of these actions and the administration of the bankrupt estates. The respondents dealt with these other issues in their factums, and they are properly before this Court. In light of the partial lifting of the stay, some of the other issues are clear enough to enable disposition at this point.

[19] The respondents argued that the Trustee could not pursue the Havelock and Metz actions because he would be in a conflict of interest. As the bankrupts are among the defendants in the actions, the Trustee would effectively be suing itself. Since the actions will be proceeding only against the two respondents, who are not bankrupts, there is no longer a concern about conflicts. For the same reason, the doctrine of merger is not engaged. Trustees in bankruptcy routinely challenge preferential payments made by their own bankrupts under s. 95, without any merger occurring.

[20] The respondents allege that the assignments are champertous. As noted, one of the fundamental duties of a trustee in bankruptcy is to get in the assets of the bankrupt. Since the assignments permit the Trustee to pursue assets that allegedly belong to the bankrupts, the Trustee has a legitimate interest in the actions that allays any concerns about champerty: ***Margetts (Next friend of) v Timmer Estate***, 1999 ABCA 268 at para. 12, 73 Alta LR (3d) 110, 244 AR 114.

[21] The respondents also argue that the Trustee has not met the test for lifting a stay found in s. 69.4 of the *Bankruptcy and Insolvency Act*. The stays in question were imposed during the case management process, in an attempt to bring order to the litigation. With respect to the two respondents, they were not the statutory stays that arise when a defendant is declared to be bankrupt, as neither of the respondents in this appeal is bankrupt. The lifting of the stays against the non-bankrupt respondents is accordingly governed by common law principles, not by the provisions of the *Act*. Since the stays are not to be lifted against any of the bankrupt defendants, s. 69.4 is not engaged.

[22] Finally, the respondents argue that the Havelock and Metz actions are of insufficient merit to warrant lifting the stay. The merits of an action are undoubtedly relevant in deciding whether to lift a stay, and clearly hopeless actions should not be revived. An application to lift the stay is not, however, the place for detailed examination of the merits; if any party thinks that it is entitled to summary disposition of the claims, it can bring the appropriate application. There may well be valid defences to some of the claims made in the two actions, and the Trustee may well face procedural and evidentiary hurdles. On this record, however, the two actions are of sufficient merit to entitle the Trustee to an opportunity to pursue the claims on their merits.

Conclusion

[23] In summary, while a trustee cannot pursue the claims of individual creditors, a trustee has a duty to pursue the assets of the bankrupt estate. The stay of the Havelock and Metz actions should be lifted to the extent of permitting the Trustee to pursue the fraudulent preference and

constructive trust claims, but not the personal claims, against the two respondents. The appeal is allowed to that extent. Any procedural implications arising from the partial lifting of the stay are referred back to the case management judge.

Appeal heard on April 2, 2015

Memorandum filed at Edmonton, Alberta
this 14th day of April, 2015

Costigan J.A.

Slatter J.A.

Bielby J.A.

Appearances:

G.J. Thorlakson
for the Appellant

K.W. Fitz and C. Ballesteros
for the Respondent Shauna Lee Dorais

P.G. Asselin
for the Respondent Grant Dewar