Court File No. CV-18-608271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

– and –

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE, also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

FACTUM OF THE APPLICANTS
(Motion to Appoint a Receiver returnable February 28, 2019)

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PART I - OVERVIEW

1. The Applicants seek a receivership order to protect the Applicants' ability to enforce final judgments from a United States federal court in Pennsylvania.

2. The Applicants were victimized by a fraudulent loan scheme orchestrated by the Hutchenses. They suffered millions of dollars in damages. Given the egregious nature of the Hutchenses' conduct, the U.S. federal court awarded judgment against them for over US$26 million. The Court also found that the Hutchenses – especially Sandy Hutchens – had engaged in an "obstructive and fraudulent pattern of behavior" and showed "unapologetic contempt for the judicial process".

3. The Applicants are not the only victims of the Hutchenses' fraudulent conduct. In a class action in Colorado, the Hutchenses were found liable to a class of American and Canadian citizens who were victimized by the same fraudulent scheme. The Court in that action held that the Hutchenses had attempted to defeat their creditors by funneling funds obtained from their victims into various real estate properties in Ontario held by corporations they control.

4. Absent this Court's prompt and substantial intervention, it is unlikely that the Applicants will be able to collect from the Respondents. Accordingly, the Applicants, supported by the Plaintiffs in the Colorado action, ask this Court to appoint a receiver in order to:

(1) Ensure that assets are not dissipated to avoid judgment – a very real concern given multiple court findings that the Respondents fraudulently conveyed assets and flouted court orders;

(2) Investigate to determine available assets, some of which appear to be held through a complex set of corporate structures, with the aid of investigative powers broader than those ordinarily afforded judgment creditors (including powers to compel information from third parties). It may also be necessary to trace funds from individual victims of the Hutchenses' fraud into specific assets;

(3) Operate the subject rental apartment building properties, including collecting and preserving rental payments;

(4) Maximize the value of available assets for execution, for multiple judgment creditors with total claims of over US$50 million; and

(5) If necessary, resolve priority disputes among creditors of the Respondents in a fair and efficient manner.

PART II - SUMMARY OF FACTS

A. The Underlying Fraud

5. The individual Applicants, Gary and Linda Stevens, are residents of Mayerthorpe, Alberta. The corporate Applicant, 1174365 Alberta Ltd., is a corporation organized under the laws of Alberta, of which Gary and Linda are the sole shareholders.[1]

6. In October 2014, the Applicants sought mortgage refinancing for a property they were developing in Saskatchewan. They were referred by mortgage brokers to Westmoreland Equity Fund, LLC ("**Westmoreland**"). Westmoreland required the Applicants to pay large advance fees

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[1] Affidavit of Howard Langer sworn January 8, 2019 ("**Langer Affidavit**"), para. 3 (Applicants' Motion Record ("AMR") Vol. 1, Tab B, p. 40).

for the financing they sought. The Applicants funded these fees by mortgaging another property of theirs in Arizona.[2]

7. Over the following months, Westmoreland reneged on its promises to provide financing, changing the amount it said it would loan from $13,900,000 CDN to $5,700,000 CDN, then to $7,500,000 CDN, conditioned on the Applicants meeting certain novel financing requirements that Westmoreland knew the Applicants could not meet.[3]

8. In time, the Applicants discovered that they were among many victims of a fraudulent scheme orchestrated by Sandy and Tanya Hutchens. The scheme operated as follows. Westmoreland, serving as a front, required prospective borrowers to pay large advance fees to issue loan commitments. It then issued the loan commitments, even though it had neither the financial ability nor the intent to fund the loans.[4] Its loan commitments provided that, as a condition for closing, the borrowers had to pay substantial additional fees. Westmoreland then created a pretext to find fault with the borrowers' loan applications and materials, which it then used to justify imposing further conditions, often including a demand for additional fees. In time, Westmoreland asserted that its victims had failed to satisfy these new terms and conditions and relied on these trumped-up defects as grounds for terminating the loan application process. Upon its termination of the process, Westmoreland kept all the monies advanced.[5]

9. When Westmoreland repeatedly failed to honour its financing commitments to the Applicants, the Applicants' original lender foreclosed on their Saskatchewan property.[6] The

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2 Langer Affidavit, para. 5 (AMR Vol. 1, Tab B, p. 40).
3 Langer Affidavit, para. 6 (AMR Vol. 1, Tab B, p. 40).
4 Langer Affidavit, para. 9 (AMR Vol. 1, Tab B, p. 40)
5 Langer Affidavit, para. 9 (AMR Vol. 1, Tab B, p. 40)
6 Langer Affidavit, para. 7 (AMR Vol. 1, Tab B, p. 40).

Applicants were also unable to repay their debt on the Arizona property they mortgaged to fund the fees demanded by Westmoreland. As a result, they lost the Arizona property to foreclosure.[7]

B. The U.S. Judgments against Sandy Hutchens and Tanya Hutchens and their "Contempt for the Judicial Process"

10. The Applicants brought a claim against Westmoreland and the Hutchenses – as well as others involved in the fraud – in the Pennsylvania Court of Common Pleas of Philadelphia County (the "**Pennsylvania State Court**") under Pennsylvania state law.[8] The claim was brought in Pennsylvania because Westmoreland was registered with the Pennsylvania Secretary of State as operating in Pennsylvania and, in those filings, Westmoreland's principal place of business was declared as 1650 Market Street, Philadelphia, Pennsylvania.[9] The Applicants subsequently amended their complaint to include claims under the federal *Racketeer Influenced and Corrupt Organizations Act* ("**RICO**") and to add additional defendants.[10] Due to the addition of claims under federal law, the action was transferred from the Pennsylvania State Court to the United States District Court for the Eastern District of Pennsylvania (the "**Federal Court**").[11]

11. The Applicants made multiple efforts to serve Sandy and Tanya Hutchens with their Federal Court complaint, all of which were frustrated by the Hutchenses.[12] The Applicants therefore applied to the Federal Court for directions on how to serve the Hutchenses.

12. With respect to Sandy, the Federal Court directed that he be served (i) by mail at his residence at 1779 Cross Street, Innisfil, Ontario, L9S 4L9 and, (ii) also by email to

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7 Langer Affidavit, para. 7 (AMR Vol. 1, Tab B, p. 40).
8 Langer Affidavit, para. 10 (AMR Vol. 1, Tab B, p. 41)
9 Langer Affidavit, para. 11 (AMR Vol. 1, Tab B, p. 41)
10 Langer Affidavit, para. 13 (AMR Vol. 1, Tab B, p. 42)
11 Langer Affidavit, para. 13 (AMR Vol. 1, Tab B, p. 42)
12 Langer Affidavit, para. 14 (AMR Vol. 1, Tab B, p. 42)

sandyhutchens0@gmail.com (the "**Sandy Hutchens Service Order**").[13] With respect to Tanya, the Federal Court directed that she be served (i) by mail at her residence at 33 Theodore Place in Thornhill, Ontario, (ii) by also serving Gary Caplan, her Canadian counsel, at Mason Caplan Roti LLP in Toronto, and (iii) given Tanya's involvement in Sandy's business affairs, the Applicants were to also serve Tanya at Sandy's address at 1779 Cross Street, Innisfil, Ontario, as an additional means of providing actual notice to Tanya (the "**Tanya Hutchens Service Order**").[14] All relevant documents and pleadings were then served on Sandy and Tanya Hutchens in accordance with those orders.[15]

i. Delay and Frustration of the Judicial Process by the Hutchenses

13. Sandy Hutchens was well aware of the Federal Court proceeding against him. Among other things, he filed pleadings on his own behalf and on behalf of Westmoreland, using the same email address that the Applicants had used to serve him.[16] Yet despite being aware of the action, he repeatedly failed to follow the Federal Court's orders, as set out below.[17]

14. After considerable delay in obtaining discovery from Hutchens, the Applicants brought a motion to compel him to comply with his discovery obligations.[18] The Federal Court granted that motion on August 28, 2018, ordering Hutchens to answer interrogatories and produce relevant

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13 Sandy Hutchens Service Order, Exhibit 3 to Langer Affidavit (AMR Vol. 1, Tab B3, p. 138). Sandy Hutchens had previously requested that all documents be served on him by mail at 1779 Cross Street, Innisfil, Ontario and to the email address sandyhutchens0@gmail.com: see Exhibit 4 to Langer Affidavit (AMR Vol. 1, Tab B4, p. 145).

14 Tanya Hutchens Service Order, Exhibit 5 to Langer Affidavit, (AMR Vol. 1, Tab B5, p. 155).

15 Langer Affidavit, para. 17 (AMR Vol. 1, Tab B, p. 43).

16 Langer Affidavit, para. 15 (AMR Vol. 1, Tab B, p. 42); Exhibit 4 to Langer Affidavit (AMR Vol. 1, Tab B4, p. 145).

17 Langer Affidavit, paras. 26-27 (AMR Vol. 1, Tab B, p. 46).

18 The Applicants served repeated requests for production of documents, on June 8, 2018 and July 19, 2018. After receiving no response and after Hutchens failed to appear at a mandatory pre-trial hearing, the Applicants sought the Federal Court's intervention to compel discovery from Hutchens: see Langer Affidavit, para. 27 (AMR Vol. 1, Tab B, p. 46); See also Exhibit 16 to Langer Affidavit, pp. 4-5 (AMR Vol. 1, Tab B16, pp. 276-277).

documents (the "**Discovery Order**"). [19] The Discovery Order included the following warning (emphasis in original): "**FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING THE ENTRY OF JUDGMENT IN PLAINTIFFS' FAVOUR**."[20]

15. Despite being served with the Discovery Order, Mr. Hutchens did not comply with it.[21] He refused to answer numerous proper questions, produced only 11 documents, and – as the presiding judge of the Federal Court would later hold – the few responses he did provide were "largely false or fraudulent."[22]

16. The Applicants then moved to enter judgment against Hutchens as a sanction for his non-compliance. On September 26, 2018, the Federal Court ordered him to respond to the Applicants' motion no later than October 17 and show cause as to why the motion should not be granted (the "**Show Cause Order**").[23] As of October 11, 2018, Hutchens had yet to respond. On that date, after considering Hutchens' failure to respond to or comply with orders regarding discovery, the prejudice to the Applicants from Hutchens' refusal to engage in discovery, and the meritorious nature of the Applicants' case, the Federal Court entered judgment against him.[24]

17. After being served with the judgment, Sandy Hutchens sent a response to the Federal Court arguing that default judgment should not have been entered against him because the October 17 deadline had not yet passed.[25] Hutchens claimed that he "did not receive all the

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19 Langer Affidavit, para. 27 (AMR Vol. 1, Tab B, p. 46).
20 Discovery Order, Exhibit 11 to Langer Affidavit (AMR Vol. 1, Tab B11, p. 223) (emphasis in original).
21 Langer Affidavit, para. 29 (AMR Vol. 1, Tab B, p. 26).
22 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 6 (AMR Vol. 1, Tab B16, p. 278)
23 Show Cause Order, Exhibit 14 to Langer Affidavit (AMR Vol. 1, Tab B14, p. 267).
24 Langer Affidavit, para. 31 (AMR Vol. 1, Tab B, p. 47).
25 Langer Affidavit, para. 32 (AMR Vol. 1, Tab B, p. 47).

various pleadings and Orders of the Court filed in this case" despite the fact that (i) all relevant pleadings and orders were served on him in accordance with the Service Orders, (ii) those documents were served to the mailing address and email address that Hutchens requested, (iii) Hutchens' response to the Show Cause Order was sent from the same email account that was used to serve him, and (iv) no email or mail sent to him was ever returned as undeliverable.[26] The Federal Court vacated the default judgment issued against Sandy Hutchens in order to consider his submissions and to allow him to make additional submissions.[27]

18. On November 16, 2018, the Applicants brought a motion asking that the judgment be reinstated, as Sandy Hutchens had still not complied with previous orders against him, nor had he provided any valid reason for non-compliance.[28] On December 19, 2018, the Federal Court issued a detailed decision re-instating its judgment against Hutchens and finding him liable to the Applicants in the amount of US$26,774,763.09 (the "**Sandy U.S. Judgment**").[29]

ii. Sandy Hutchens' "obstructive and fraudulent pattern of behavior" and "unapologetic contempt for the judicial process"

19. In its reasons for granting judgment against him, the Federal Court concluded that Sandy Hutchens had engaged in an "obstructive and fraudulent pattern of behavior during this litigation."[30] Among other things, the Court pointed to Hutchens' persistent refusal to comply with court orders, that "Hutchens has filed **false, unverified interrogatory answers incorporating forged documents, produced virtually no relevant documents,** and has provided no reason in response to the Court's Order to show cause why judgment should not be

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26 Langer Affidavit, para. 32 (AMR Vol. 1, Tab B, p. 47).
27 Langer Affidavit, para. 33 (AMR Vol. 1, Tab B, p. 47).
28 Langer Affidavit, para. 33 (AMR Vol. 1, Tab B, p. 47).
29 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit (AMR Vol. 1, Tab B16, p. 276); Sandy U.S. Judgment; Exhibit 17 to Langer Affidavit (AMR Vol. 1, Tab B17, p. 284).
30 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 4 (AMR Vol. 1, Tab B16, p. 276).

reentered"[31] and also that "Hutchens continued to ignore this litigation and his corresponding obligations until *after* I entered Judgment against him."[32]

20. The Court held that Hutchens' responses were inexcusably deficient, especially with respect to his and Westmoreland's financial dealings. Among other things, the Court observed:

(1) Hutchens had refused to answer questions about transactions between him or Westmoreland and other defendants, despite the Federal Court's finding that these questions were proper;[33]

(2) Hutchens had refused to provide particulars on transactions where Westmoreland took loan fees, arguing that it would be burdensome on him to answer these questions. The Federal Court concluded that "[i]t is troubling that Hutchens finds maintaining and providing basic business records to be so burdensome. Their relevance to the Plaintiffs' RICO allegations is obvious."[34]

(3) "More troubling, those responses Hutchens *did* provide are **largely false or fraudulent**." For example, when asked to identify Westmoreland's source of funds for its loan to the Applicants, Hutchens identified lending agreements with banks that – according to documents produced by his co-defendants – did not become involved with Westmoreland until two years after the loan to the Applicants.[35]

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31 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 4 (AMR Vol. 1, Tab B16, p. 276) (emphasis added).

32 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 5 (AMR Vol. 1, Tab B16, p. 277) (emphasis in original).

33 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 6 (AMR Vol. 1, Tab B16, p. 278).

34 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 6 (AMR Vol. 1, Tab B16, p. 278).

35 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 6 (AMR Vol. 1, Tab B16, p. 278).

(4) "Hutchens' current arguments reveal his **casual attitude towards the truth**. His 'evidence' of 'innocence' is **clearly fraudulent** and contradicted by documents obtained by the Plaintiffs from other Defendants."[36]

21. The Federal Court also gave detailed reasons on how "Hutchens' pattern of behavior reveals an **unapologetic contempt for the judicial process**".[37] Noting that "Hutchens undoubtedly was aware of the ongoing lawsuit because, on May 15, 2018, he filed an Answer to the Complaint" the Court held that:

(1) "Hutchens has nonetheless **repeatedly and consistently flouted my Orders** to participate…. Hutchens has an **extensive history of missed deadlines, appearances, and ignored Orders**."[38]

(2) "His discovery responses [are] virtually non-existent and his discovery objections are frivolous. Moreover, they appear rife with inaccuracies and falsehoods, **supported only by forged or fraudulent documents**….Hutchens has virtually stonewalled Plaintiffs' discovery requests";[39]

(3) "In responding to the instant Motion, he has appended documents and exhibits that he told Plaintiffs did not exist or were irrelevant to the litigation. His actions are **obviously both dilatory and taken in bad faith**."[40]

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36 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 10 (AMR Vol. 1, Tab B16, p. 282).
37 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 9 (AMR Vol. 1, Tab B16, p. 281).
38 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 9 (AMR Vol. 1, Tab B16, p. 281).
39 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 8 (AMR Vol. 1, Tab B16, p. 280).
40 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, pp. 9-10 (AMR Vol. 1, Tab B16, pp. 281-282).

(4) "In these circumstances—where Hutchens refused to answer basic, relevant questions and, when he did respond, did so falsely—it is apparent that Hutchens has **continued to defy his discovery obligations and this Court's Orders.**"[41]

22. On whether default judgment was an appropriate sanction for Hutchens' conduct, the Federal Court concluded that: "[a]lternative sanctions would not be effective. **Hutchens has repeatedly ignored or defied my prior Orders**. The seriousness of this sanction against him is appropriate and merited by my continual warnings and notice to Hutchens of the likely consequences."[42]

23. The Federal Court also considered the merits of the Applicants' claim and concluded that "Plaintiffs also have a meritorious claim" and that "Hutchens has provided me with no reason to believe that he has a meritorious or even *bona fide* defense to Plaintiffs' claims."[43]

iii. Tanya Hutchens' failure to comply with orders of the Federal Court

24. The Applicants served Tanya Hutchens with the Federal Court complaint against her in accordance with the Tanya Hutchens Service Order in April 2018.[44] In late August 2018, more than four months after service, she had still not filed a response. The Applicants therefore applied for default judgment against her.

25. On October 11, 2018, after considering evidence of the Applicants' damages, as well as the evidence that all relevant motions and court filings had been sent to her as ordered, the Federal Court granted default judgment against Tanya (the "**Tanya U.S. Judgment**").

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41 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 7 (AMR Vol. 1, Tab B16, p. 279).
42 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 10 (AMR Vol. 1, Tab B16, p. 282).
43 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 10 (AMR Vol. 1, Tab B16, p. 282).
44 Default Judgment Materials, Exhibit 6 to Langer Affidavit, p. 2 (AMR Vol. 1, Tab B6, p. 159).

26. On or around October 22, 2018, Tanya Hutchens sought to vacate the Tanya U.S. Judgment. The Federal Court denied her motion on October 26, 2018, finding, among other things, that:

(1) "Mrs. Hutchens' statement—that she did not receive any pleadings in the case—is simply untrue. Mrs. Hutchens was lawfully served with all pleadings in this lawsuit";

(2) "Significantly, Mrs. Hutchens has not presented a meritorious defense; she has filed no Answer to Plaintiffs' Amended Complaint. To the extent that Mrs. Hutchens' Affidavits or Reply constitute an Answer, they offer little more beyond blanket denials. Mrs. Hutchens alleges no facts to contest Plaintiffs' claims against her, other than broad denials, labeling the witness who testified against her in another matter a liar";

(3) "The default judgment against Mrs. Hutchens is the result of her own considered choice to ignore Plaintiffs' suit. Her appearance now—only after default has been entered—is telling."[45]

27. On November 21, 2018, Tanya Hutchens filed another motion seeking relief from judgment. On November 29, 2018, the Federal Court issued a detailed order denying that motion. The Federal Court noted that Tanya Hutchens' material "repeats the same arguments I rejected in my October 26, 2018 Order" and noted that the evidence presented by the Applicants confirmed

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[45] First Order Denying Motion to Vacate, Exhibit 8 to Langer Affidavit, pp. 1-6 (AMR Vol. 1, Tab B8, pp. 201-206).

Tanya Hutchens' involvement in the fraud "despite the utter lack of discovery cooperation from Mrs. Hutchens and others involved in the fraud".[46]

28. Meanwhile, on November 5, 2018, the Applicants commenced this application in Ontario seeking to enforce the Tanya U.S. Judgment. Since that date, the Federal Court also entered the Sandy U.S. Judgment. The Applicants therefore amended their Notice of Application to include Sandy as a Respondent, and to recognize and enforce both the Tanya U.S. Judgment and the Sandy U.S. Judgment (collectively, the "**U.S. Judgments**").

C. Other Claims against the Respondents for Fraud: The Colorado Class Action

29. After commencing their claim in the Federal Court, the Applicants discovered that Westmoreland was a continuation of an earlier fraudulent scheme by Sandy and Tanya with numerous victims across Canada and the United States. A nationwide class action had been brought in Colorado on behalf of U.S. residents who were victims of the same fraudulent scheme over an earlier period (the "**Colorado Class Action**"). The Colorado Class Action was brought on behalf of U.S. residents who were issued loan commitments from January 1, 2005 to April 7, 2013 by so-called "lending" entities owned and/or controlled by the Hutchenses.[47]

30. The Colorado Class Action was certified as a class action against Tanya and Sandy. After extensive pre-trial proceedings, the case went to trial on May 1, 2017, before a jury in the United States District Court for the District of Colorado in Denver (the "**Colorado District Court**").[48] The jury gave a unanimous verdict that the Hutchenses and their adult daughter, Jennifer Hutchens, were jointly and severally liable for damages under RICO. The jury awarded class

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46 Second Order Denying Motion to Vacate, Exhibit 9 to Langer Affidavit, p. 3 (AMR Vol. 1, Tab B9, p. 209).
47 Langer Affidavit, para. 40 (AMR Vol. 1, Tab B, p. 49).
48 Langer Affidavit, para. 41 (AMR Vol. 1, Tab B, p. 49).

members compensatory damages of $8,421,367.00. As a result of post-trial motions, the Colorado District Court awarded treble damages, attorneys' fees, costs of bringing suit, pre-judgment interest, and post-judgment interest in the total amount of US$24,239,101.[49]

31. During and after the jury trial, Tanya claimed to have minimal involvement in the fraud and tried several times to decertify the class action against her or have the judgment vacated. In post-trial rulings issued on September 26, 2017, and December 18, 2017, the Colorado District Court rejected her arguments, holding that there was an ample evidentiary basis for the jury to find she was liable under RICO for the following reasons:

(1) Based on fact witness testimony, Tanya Hutchens was an "equal partner in the business" with Sandy Hutchens and was involved on an "almost daily" basis, including dealing with banking matters and participated in discussions about "deals and the structuring of deals" and was active in conversations with both brokers and borrowers.[50]

(2) Tanya was involved in marketing for First Central Mortgage Company (including setting up its website), which issued more than $300 million in loan commitments to U.S. borrowers as part of the fraudulent scheme.[51]

(3) Funds that were received from the fraud victims in the advance fee loan scheme were transferred to Tanya and used by her to invest in real estate properties in Ontario.[52] Fees collected from the victims of the fraudulent scheme "flowed through entities owned and controlled by Sandy Hutchens and were distributed to

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49 Langer Affidavit, para. 44 (AMR Vol. 1, Tab B, p. 509).
50 Rulings on Post-Trial Motions, Exhibit 21 to Langer Affidavit, p. 4 (AMR Vol. 2, Tab B21, p. 338).
51 Rulings on Post-Trial Motions, Exhibit 21 to Langer Affidavit, p. 5 (AMR Vol. 2, Tab B21, p. 339).
52 Rulings on Post-Trial Motions, Exhibit 21 to Langer Affidavit, p. 5 (AMR Vol. 2, Tab B21, p. 339).

Sandy, Tanya, her mother, the children, and the Transferee/Hutchens properties via purported "shareholders' advances" or "advances [to] affiliated companies."

(4) The Colorado District Court rejected the explanations offered by Sandy and Tanya for transfers of funds from Sandy to Tanya. Instead, "the Court finds that the transfers, in whole or in part, and the use of the transferred funds to purchase real property in the name of Tanya, the children, or other parties related to the family, **was essentially a cover** for getting plaintiffs' funds out of the hands of Sandy Hutchens and his companies and into the potentially safer hands of Tanya and other family members."[53]

(5) "Frankly, the Court found Tanya's testimony to the effect that she was not involved with any of the illicit activity that made up the fraudulent scheme to be incredible, just as it found Sandy's testimony, in large part, to be incredible."[54]

32. In its second ruling on post-trial motions, when it again rejected Tanya's arguments that she was not involved in the fraud, the Colorado District Court observed that "I addressed Tanya Hutchens' arguments when I ruled on pretrial motions, again in denying her Rule motions at trial, and again in ruling on Tanya Hutchens' motion to decertify the class as against her. Repetition has not changed my mind."[55]

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53 Rulings on Post-Trial Motions, Exhibit 21 to Langer Affidavit, p. 10 (AMR Vol. 2, Tab B21, p. 344).
54 Rulings on Post-Trial Motions, Exhibit 21 to Langer Affidavit, p. 5 (AMR Vol. 2, Tab B21, p. 339).
55 Rulings on Additional Post-Trial Motions, Exhibit 23 to Langer Affidavit, p. 14 (AMR Vol. 2, Tab B23, p. 365).

33. The plaintiffs in the Colorado Class Action, through their Ontario litigation counsel – Siskinds LLP – have brought a proceeding in London, Ontario to recognize and enforce that judgment. That proceeding is ongoing.[56]

34. The Colorado Class Action has revealed a pattern involving Tanya Hutchens whereby real properties are placed in the name of a corporation, with the corporate name being the address of the property, Tanya Hutchens being the director of the company and its registered place of business being her home address of 33 Theodore Place, Vaughan, Ontario. This is the case with the following properties, all of which are held by a corporation where Tanya Hutchens is listed as a director of the company and its registered place of business is stated to be her home address of 33 Theodore Place, Vaughan, Ontario:

(1) 29 Laren Street, Sudbury, Ontario held by 29 Laren Street Inc.;
(2) 3415 Errington Avenue, Sudbury, Ontario held by 3415 Errington Avenue Inc.;
(3) 3419 Errington Avenue, Sudbury, Ontario held by 3419 Errington Avenue Inc.;
(4) 331 Regent Street, Sudbury, Ontario held by 331 Regent Street Inc.;
(5) 110-114 Pine Street, Sudbury, Ontario held by 110-114 Pine Street Inc.;
(6) 193 Mountain Street, Sudbury, Ontario held 193 Mountain Street Inc.; and
(7) 367-369 Howey Drive, Sudbury, Ontario held by 367-369 Howey Drive Inc.[57]

35. The jury in the Colorado Class Action found that a number of these real properties as well as other assets were fraudulently transferred by Sandy Hutchens to others in order to shield them from creditors. Based on these findings, the Colorado District Court declared a constructive trust over these properties in favour of the Colorado Class Action.[58] Based on that declaration, the Colorado Class Action plaintiffs have obtained certificates of pending litigation on these properties in their Ontario enforcement proceeding in London.

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56 Langer Affidavit, para. 46 (AMR Vol. 1, Tab B, p. 51).
57 Langer Affidavit, para. 48 (AMR Vol. 1, Tab B, p. 51).
58 Langer Affidavit, para. 47 (AMR Vol. 1, Tab B, p. 51); Rulings on Additional Post-Trial Motions, Exhibit 23 to Langer Affidavit, p. 1 (AMR Vol. 2, Tab B23, p. 352).

D. Difficulties Tracing Funds

36. The Applicants' ability to trace the funds fraudulently taken from them, and to investigate the assets held by Tanya and Sandy Hutchens, has been severely limited, because of the Hutchenses' non-compliance with discovery procedures in the Federal Court as detailed above. Sandy Hutchens failed to comply with the Discovery Order, either by failing to answer interrogatories or providing fraudulent documents. Tanya Hutchens did not even attempt to comply with her discovery obligations. As a result, the Applicants have considerably incomplete knowledge of the assets currently held by the Hutchenses in Ontario.

37. Property searches based on the information that is available show several instances of unusual activity and registrations that merit further investigation as to their validity. For example, the property at 193 Mountain Street, which the Colorado Class Action determined was purchased in part with fraudulently obtained funds from victims, formerly had a charge registered on title from First National GP Corporation.[59] That charge was transferred on April 20, 2018 to JDB Hutchens Family Holdings Inc.[60] – seemingly the same corporation that the Colorado District Court held was owned by the Hutchenses.[61] JDB Hutchens Family Holdings Inc. then transferred that charge on November 16, 2018 to an entity listed as Sudbury Apartment Rentals Limited.[62]

E. Other Charges on the Properties and Notices of Sale

38. Ontario title searches performed on several of the properties show that they bear mortgages in favour of Meridian Credit Union ("**Meridian**"). On request, counsel to Meridian provided more information about its mortgages, including that it had sent out Notices of Sale for

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59 Exhibit 36 to Langer Affidavit (AMR Vol. 2, Tab B36, p. 552).
60 Exhibit 36 to Langer Affidavit (AMR Vol. 2, Tab B36, p. 552).
61 Second Amended and Final Judgment, Exhibit 19 to Langer Affidavit, p. 3 (AMR Vol. 1, Tab B19, p. 327).
62 Exhibit 36 to Langer Affidavit (AMR Vol. 2, Tab B36, p. 552).

several properties and had entered into a forbearance agreement that will terminate on April 30, 2019.[63] Meridian claims a right to sell the following properties to satisfy loans made by Meridian:

(1) LT 31, PL 657; INNISFIL, being all of PIN (58072-0299 (LT)) ("**1889 Simcoe Blvd**");

(2) PT N ½ LT 25 CON 6 INNISFIL AS IN RO1093173, S/T RO1093173; INNISFIL, being all of PIN (58069-0150 (LT)) ("**1779 Cross Street**")

(3) LT 1, PL 978; INNISFIL, being all of PIN (58069-0103 (LT)) ("**1790 Cross Street**");

(4) LT 6, PL 642; INNISFIL, being all of PIN (58068-0102 (LT)) ("**1479 Maple Road**");

(5) PCL 89-1, SEC 65M2941; LT 89, PL 65M2941, S/T LT746593; VAUGHAN, being all of PIN (03251-0304 (LT)) ("**33 Theodore Place**").[64]

39. If these properties are sold and any residual proceeds are returned to Tanya Hutchens and Sandy Hutchens, there is a significant risk of dissipation that would threaten the Applicants' ability to recover the debts owing to them. Meridian has agreed to forbear on selling the properties until April 30, 2019, but after that date there is no restriction on the properties being sold and the proceeds dissipated by the Hutchenses.

40. There are several other parties with registrations on title.[65] The Applicants have provided them with notice of this motion.

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63 Langer Affidavit, para. 54 (AMR Vol. 1, Tab B, p. 53).
64 Notices of Sale, Exhibit 38 to Langer Affidavit (AMR Vol. 2, Tab B38, pp. 576-585).
65 Title searches, AMR Vol. 1, Tabs B36 and B47.

PART III - ISSUES

41. The issue on this motion is whether a receiver should be appointed over the property of Tanya and Sandy Hutchens.

PART IV - LAW AND ARGUMENT

A. Appointing a receiver is just and appropriate in these circumstances

42. The Applicants ask this Court to appoint A. Farber & Partners Inc. as a receiver over the assets of the Respondents. The full relief requested is set out in the Draft Order appended to the Applicants' Notice of Motion.[66]

43. This Court has broad discretion to appoint an equitable receiver "where it appears to a judge of the court to be just or convenient to do so".[67]

44. Ontario courts have appointed receivers in a variety of circumstances. Relevantly for this case, such circumstances have included cases involving contrived or elaborate business structures, where large amounts of money are at stake that may not be realized without the appointment, and where the debtor has arranged his or her affairs to shelter its assets.[68] Another relevant factor is whether there are legal impediments to ordinary means of execution.[69] Those circumstances all exist here.

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66 Schedule A to Notice of Motion (AMR Vol. 1, Tab A, pp. 18-38).

67 *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.101; *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 41.01 and 60.02.

68 *Weig v. Weig*, 2012 ONSC 7262, at paras. 20-21 (Applicants' Book of Authorities ("ABOA"), Tab 1); *Aly v. Tohamy*, 2013 ONSC 7738 (ABOA, Tab 2); *Miller v. Debartolo-Taylor*, 2015 ONSC 5465 (ABOA, Tab 3).

69 *Weig v. Weig*, 2012 ONSC 7262 (ABOA, Tab 1).

i. Special circumstances supporting the appointment of a receiver

45. It is hard to imagine a case that cries out for substantial interlocutory relief more than this one. A receivership is a more practical form of relief than a *Mareva*, which would be available on this record. This case is particularly appropriate for the appointment of a receiver given:

(1) the Respondents' history of fraudulent conduct and findings of the Federal Court of a "pattern of behavior" of "unapologetic contempt for the judicial process",

(2) the large amounts of money at stake that might not be recovered without the appointment, and

(3) the Respondents' contrived and elaborate business structures, and findings of the Federal Court that the Hutchenses have deliberately arranged their affairs to shelter assets from creditors.[70]

46. ***A history of fraudulent conduct and flouting court orders***. Courts have previously held that a history of fraudulent conduct, especially where it includes a history of ignoring court orders, justifies the imposition of extraordinary relief. Such conduct raises justifiable concerns that the defendant may continue to ignore future court orders intended to protect the plaintiff's right to recovery.[71] As set out in paragraphs 19 to 23 and 31 to 32 above, both the Federal Court and the Colorado District Court made numerous findings of fraudulent conduct by the Hutchenses. The Federal Court specifically found that Sandy Hutchens provided "false or fraudulent" information to the Court,[72] that "[h]is actions are obviously both dilatory and taken in bad faith" and that he showed "unapologetic contempt for the judicial process."[73]

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70 *Weig v. Weig*, 2012 ONSC 7262, at paras. 20-21 (ABOA, Tab 1).

71 *Carmen Alfano Family Trust v. Piersanti*, 2011 ONSC 4971 at para. 19 (ABOA, Tab 4); *Loblaw Brands Ltd. v. Thornton* [2009] O.J. No. 1228 (S.C.J.) at para. 16 (ABOA, Tab 5).

72 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 6 (AMR Vol. 1, Tab B16, p. 278).

73 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 9 (AMR Vol. 1, Tab B16, p. 281).

47. No other form of relief, short of a receivership, would be effective in protecting the Applicants' right to recover on their judgment. Other forms of relief would still leave the Hutchenses with control over their assets, trusting that they would obey court orders. There is no reason to believe they will do so. This concern is not theoretical. The Federal Court has already held that Sandy Hutchens "repeatedly and consistently flouted my Orders",[74] and that Tanya Hutchens made a "considered choice to ignore Plaintiffs' suit" and that judgment against her "is thus due entirely to Mrs. Hutchens' culpable conduct".[75]

48. As this Court held in *Continental Casualty Co. v. Symons*, a failure to follow court orders in a foreign proceeding is a factor justifying the imposition of a receivership.[76] In that case, like this one, the plaintiffs sought to recognize and enforce a U.S. Federal Court judgment that found the defendants liable for fraud. In both cases, the defendants failed to obey U.S. Federal Court orders to produce relevant documents and financial information, resulting in the imposition of judgment as a sanction for such misconduct. In granting the plaintiff's motion for an investigative receiver, the Court in *Symons* held that:

> The Plaintiff does not have to "exhaust" remedies by engaging in the same kind of futile discovery process that has led the U.S. court to hold the Defendants in contempt of court. The court's discretionary jurisdiction to act under section 101 of the Courts of Justice Act is not limited to ensuring that costly and fruitless procedural steps are followed for no substantive purpose.[77]

49. ***Large amounts of money are at stake***. Where large amounts of money are at stake – and especially where the amounts claimed significantly exceed the known available assets – a

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74 Reasons for Sandy U.S. Judgment, Exhibit 16 to Langer Affidavit, p. 9 (AMR Vol. 1, Tab B16, p. 281)

75 First Order Denying Motion to Vacate, Exhibit 8 to Langer Affidavit, pp. 1-6 (AMR Vol. 1, Tab B8, pp. 201-206)

76 *Continental Casualty Co. v. Symons*, 2016 ONSC 4555 at para. 22 (ABOA, Tab 6).

77 *Continental Casualty Co. v. Symons*, 2016 ONSC 4555 at para. 22 (ABOA, Tab 6).

receivership is particularly appropriate.[78] This Court has previously held that a significant disparity between the amounts claimed to be owing and defendants' known assets makes it likely that a plaintiff's ability to recover will be significantly jeopardized without a receiver.[79]

50. Between the Applicants' claim and the Colorado Class Action, the Hutchenses owe over US$50 million. While the Applicants do not have complete information about the Hutchenses finances – due to their refusal to comply with discovery orders from the Federal Court – it is unlikely that the Hutchenses have sufficient assets to fully satisfy both judgments without the intervention of a receiver to assist in maximizing the available assets and to investigate the Hutchenses affairs to uncover other assets.

51. ***Contrived or elaborate business structures***. A receivership is often appropriate where there are complex relationships between different corporations, particularly where there is a good basis to think that such corporate structures are being used as debt avoidance vehicles.[80]

52. In this case, the Hutchenses control a large number of corporations that hold property in Ontario. There is a good basis to believe that these corporations are being used as debt avoidance vehicles – and indeed, this was the basis on which the jury in the Colorado Class Action granted a constructive trust over the properties held by those corporations. Moreover, there are several examples of these corporations granting each other charges on title of these properties for no clear purpose. Examples of this are reflected in the title searches included in Exhibits 36 and 37 of the Langer Affidavit.

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78 *Weig v. Weig*, 2012 ONSC 7262, at paras. 20-21 (ABOA, Tab 1).

79 *Loblaw Brands Ltd. v. Thornton* [2009] O.J. No. 1228 (S.C.J.) at para. 16 (ABOA, Tab 5); see also *Akagi v. Synergy Group (2000) Inc*., 2015 ONCA 368 at para. 80 (ABOA, Tab 7).

80 *Weig v. Weig*, 2012 ONSC 7262 at para. 20 citing *Canadian Film Development Corp. v. Perlmutter*, [1986] O.J. No. 2334 (H.C.) (ABOA, Tab 1).

53. One additional, specific, example of a transaction meriting investigation by a receiver concerns 193 Mountain Street, where a charge on title was registered by the plaintiffs in the Colorado Class Action in light of the constructive trust in their favour over that property. However, that property appears to have been sold under a purported power of sale by JBD Hutchens Family Holdings Inc. on November 16, 2018 – after judgment in the Colorado Class Action was rendered.[81]

ii. There are legal impediments to ordinary means of execution

54. As set out above, there are impediments here to ordinary means of execution as a result of complex corporate structures and competing proprietary claims. The assistance of a receiver is needed to investigate and determine the validity and priority of these claims and to facilitate execution.[82]

iii. The Respondents have an existing, final, debt obligation to the Applicants

55. The Applicants' claim against the Hutchenses is based on final judgments of the U.S. Federal Court. Judgment against the Hutchenses has already occurred. All of the steps that follow in this Court – the application for recognition and enforcement, this motion to appoint a receiver, and any motions that may follow – are all steps in aid of enforcement of that existing judgment.

56. The Supreme Court has specifically held that an application for recognition and enforcement is merely part of the enforcement process and not an adjudication on any issues of substance or liability.[83] As the Court held in *Chevron Corp. v. Yaiguaje*:

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81 Exhibit 36 to Langer Affidavit (AMR Vol. 2, Tab B 36, p. 552).

82 *Weig v. Weig*, 2012 ONSC 7262, at paras. 20-21 (ABOA, Tab 1); *Aly v. Tohamy*, 2013 ONSC 7738 (ABOA, Tab 2).

83 *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 at para. 44 (ABOA, Tab 8).

> [T]he purpose of an action for recognition and enforcement **is not to evaluate the underlying claim** that gave rise to the original dispute, but rather to **assist in enforcing an already-adjudicated obligation**. In other words, the enforcing court's role is not one of substance, but is instead one of facilitation ... The court **merely offers an enforcement mechanism to facilitate the collection of a debt** within the jurisdiction. ...in a recognition and enforcement case, the court **does not create a new substantive obligation**, but instead assists with the fulfillment of an existing one.[84]

57. While the *Chevron* decision did not consider particular enforcement mechanisms, such as the appointment of a receiver, the underlying principle is relevant here. An application for recognition and enforcement is not an adjudication of the merits of the underlying claim that gave rise to the judgment; rather, it is a step in the enforcement process. Judgment against the Hutchenses already occurred before the Federal Court. Appointing a receiver at this stage would not be granting execution before judgment.

58. In any event, the Applicant's application to recognize and enforce the U.S. Judgments is meritorious. Recognition and enforcement of foreign judgments is granted in Ontario where (i) there is a real and substantial connection between the case and the foreign court, (ii) the judgment is final, and (iii) the respondent has not established that the foreign judgment was obtained by fraud, in breach of natural justice, or in breach of public policy.[85] This test is met here:

(1) There was a real and substantial connection between the dispute and Pennsylvania, for the reasons stated by the Pennsylvania State Court in denying motions challenging its jurisdiction.[86]

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84 *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 at para. 44 (ABOA, Tab 8).

85 *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 at paras. 27, 77 (ABOA, Tab 8); *Mongolia v. Taskin*, 2011 ONSC 6083, aff'd 2012 ONCA 220 at para. 2 citing *Beals v. Saldanha*, [2003] 3 S.C.R. 416 (S.C.C.) and *Pro Swing Inc. v. ELTA Golf Inc*., 2006 SCC 52, [2006] 2 S.C.R. 612 (S.C.C.) (ABOA, Tab 9).

86 The Pennsylvania State Court held that Pennsylvania jurisdiction was appropriate as (i) Westmoreland was registered as operating in Pennsylvania, (ii) Westmoreland's declared principal place of business was Pennsylvania, and (iii) Westmoreland was a necessary vehicle for the conspiracy, and defendants not

(2) The U.S. Judgments are final for the purposes of recognition and enforcement. It is well-established that a judgment is final for recognition and enforcement even if the appeal process has not yet been exhausted.[87] Thus, the fact that Tanya and Sandy Hutchens have filed Notices of Appeal does not prevent the judgments from being final. In any event, those appeals are highly unlikely to succeed because, among other things, the appeals were not filed in the time required.[88] The Court of Appeals has announced that the Hutchenses' appeals are being considered for dismissal due to their failure to bring the appeals within the time required, an incurable jurisdictional flaw in that jurisdiction. Tanya and Sandy were advised that they had twenty days to make any submissions they wished to the panels. Neither did by that deadline. They were both ordered to post bonds for their appeals on findings that the appeals were "likely futile", and failed to do so by their respective deadlines.[89]

(3) The U.S. Judgments were not obtained by fraud, in breach of natural justice, or in breach of public policy. U.S. Federal Courts are widely respected and their judgments are routinely recognized and enforced in Ontario,[90] including judgments nearly identical to this one: where the plaintiffs made claims for fraud

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resident in Pennsylvania were properly subject to Pennsylvania jurisdiction as co-conspirators aware of the Pennsylvania nexus of the fraud: see Langer Affidavit, para. 11 (AMR Vol. 1, Tab B, p. 41).

87 *Continental Casualty Co. v. Symons*, 2015 ONSC 6394 at paras. 48-49 (ABOA, Tab 11); *Oz Optics Ltd. v. Dimensional Communications Inc*., [2004] O.J. No. 4543 at para. 27 (ABOA, Tab 12); *Four Embarcadero Center Venture v. Mr. Greenjeans Corp* (1988), 64 O.R. (2d) 746 (H.C.J.) (ABOA, Tab 13); *Arrowmaster Inc. v. Unique Forming Ltd*. (1993), 17 O.R. (3d) 407 (Gen. Div.) at para. 14 (ABOA, Tab 14).

88 Langer Affidavit, para. 24 (AMR Vol. 1, Tab B, p. 59).

89 Affidavit of Howard Langer sworn February 25, 2019, paras. 5-10 ("**Supplementary Langer Affidavit**") (Supplementary Motion Record, Tab 1, p. 3-4).

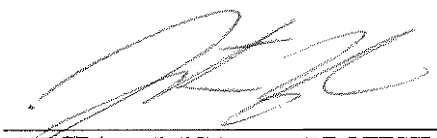
90 See e.g. *Blizzard v. Simpson*, 2012 ONSC 4312 (ABOA, Tab 15); *Disney Enterprises Inc. v. Click Enterprises Inc*. (2006), 267 D.L.R. (4th) 291 (Ont. S.C.J.) (ABOA, Tab 16); *Mongolia v. Taskin*, 2011 ONSC 6083 aff'd 2012 ONCA 220 (ABOA, Tab 9); *Johnson & Johnson Finance Corp. v. Kavoussi Estate*, 2014 ONSC 2600 (ABOA, Tab 17).

under *RICO*, default judgment was granted as a sanction for non-compliance with court orders, and elevated damages were awarded in light of the respondents' egregious conduct.[91] That was the decision of this Court in *Mongolia v. Taskin*,[92] upheld by the Court of Appeal.[93]

PART V - ORDER REQUESTED

59. The Applicants respectfully request an order appointing a receiver on the terms set out in the Draft Order included in the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of February, 2019



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91 *Mongolia v. Taskin*, 2011 ONSC 6083 at para. 51 (ABOA, Tab 9).
92 *Mongolia v. Taskin*, 2011 ONSC 6083 (ABOA, Tab 9).
93 *Bank of Mongolia v. Taskin*, 2012 ONCA 220 (ABOA, Tab 10).

SCHEDULE "A"

LIST OF AUTHORITIES

Cases

1. *Weig v. Weig*, 2012 ONSC 7262,

2. *Aly v. Tohamy*, 2013 ONSC 7738

3. *Miller v. Debartolo-Taylor*, 2015 ONSC 5465

4. *Carmen Alfano Family Trust v. Piersanti*, 2011 ONSC 4971

5. *Loblaw Brands Ltd. v. Thornton* [2009] O.J. No. 1228 (S.C.J.)

6. *Continental Casualty Co. v. Symons*, 2016 ONSC 4555

7. *Akagi v. Synergy Group (2000) Inc*., 2015 ONCA 368.

8. *Chevron Corp. v. Yaiguaje*, 2015 SCC 42

9. *Mongolia v. Taskin*, 2011 ONSC 6083, aff'd 2012 ONCA 220

10. *Bank of Mongolia v. Taskin*, 2012 ONCA 220.

11. *Continental Casualty Co. v. Symons*, 2015 ONSC 6394

12. *Oz Optics Ltd. v. Dimensional Communications Inc*., [2004] O.J. No. 4543

13. *Four Embarcadero Center Venture v. Mr. Greenjeans Corp* (1988), 64 O.R. (2d) 746 (H.C.J.);

14. *Arrowmaster Inc. v. Unique Forming Ltd*. (1993), 17 O.R. (3d) 407 (Gen. Div.)

15. *Blizzard v. Simpson, 2012 ONSC 4312*;

16. *Disney Enterprises Inc. v. Click Enterprises Inc*. (2006), 267 D.L.R. (4th) 291 (Ont. S.C.J.);

17. *Johnson & Johnson Finance Corp. v. Kavoussi Estate*, 2014 ONSC 2600.

SCHEDULE "B"

TEXT OF STATUTES AND REGULATIONS

Courts of Justice Act

R.R.O. 1990, CHAPTER 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).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Courts of Justice Act

R.R.O. 1990, CHAPTER C.43

RULES OF CIVIL PROCEDURE

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.

Reference of Conduct of a Receivership

41.04 An order appointing a receiver may refer the conduct of all or part of the receivership in accordance with Rule 54.

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.

Discharge

41.06 A receiver may be discharged only by the order of a judge.

ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY

General

60.02 (1) In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by,

(a) a writ of seizure and sale (Form 60A) under rule 60.07;

(b) garnishment under rule 60.08;

(c) a writ of sequestration (Form 60B) under rule 60.09; and

(d) the appointment of a receiver.

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD. Applicants	v.	SANDY HUTCHENS et al. Respondents	Court File No. CV-18-608271-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

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