



SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

Commercial List Office

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FAX COVER SHEET

Date: OCT 15, 2014

TO: DAVID S. WORD
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FROM: Commercial List Office

TOTAL PAGES (INCLUDING COVER PAGE): 1 OF 11

MESSAGE:

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Court File Number: CV-14-10663-00CL

Superior Court of Justice
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FILE/DIRECTION/ORDER

Re: BANQUEERS BROKERS (INTERNATIONAL LIMITED)
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
D. Ward + Co WORKING for Receiver & Trust Liquidators of BBIL		
H. Fogel, for Christopher Smith and 2341620		Ontario Liquor

- Order Direction for Registrár (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

October 15, 2014

The receiver applies to expand the receiving order made by Matheson J on August 22, 2014 as a supplemental order in the recognition of the Trust Representation in respect of proceedings brought in the 186 of Hon. That order appointed Msc Spence Inc as receiver of Bankers Broker International Limited (BBIL). It also ordered that Mr. Smith and others, attend to

Date

Judge's Signature

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So examined under oath on matters, including (i) BBIL's trade, dealings and properties and (ii) matters discussed in the Fring representation's affidavit filed in support of the application.

The receiver wishes to expand the powers granted to it to include the authority to make enquiries in respect of five specified corporations and any other entity operating under the names "Bannockburn" and like names.

The background to the receiver order of August 22, 2014 was contained in an affidavit of Mr. Paul Appleton, one of the joint liquidators of BBIL in the proceedings in the Isle of Man. He swore that a review of the transfer for corporations associated with BBIL was essential to the proper investigation of BBIL's affairs and that there was concern that money may have been redirected from BBIL to bank accounts held by other

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BBL associated companies.

The current motion is supported by the first report of the receiver which attaches two sworn affidavits of a RCMP officer obtained by the receiver after its appointment. These affidavits of the RCMP officer had been used by the Crown to obtain ex parte restraint orders pursuant to section 462.33 of the Criminal Code. These affidavits detail the basis of what is stated to be reasonable belief of the RCMP investigators that Mr. Christopher Smith & Mrs. Rajiv Dixit through their operation of Banner Builders, which includes BBL, have committed criminal offences related to a pyramid scheme, fraud, possession and laundering of the proceeds of crime and criminal misrepresentation contrary to the Competition Act.

Mr. Tequet, counsel for Mr. Smith, objects to the relief sought. Mr. Dixit takes no

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position on the notices, i.e. he does not object to the relief sought.

His Honour contends that the two sworn affidavits of the RCMP officer should not be admitted. He relies on R.v. C.D. (2005), 194 C.C.C. (3d) 321 and a statement of Justice I.A. at para 85 dealing with a fresh evidence application ~~made~~ on the CJA. I do not think that case is applicable. The material ~~re~~ relied on ^{in that case} was in the next part sworn, inadmissible hearsay. Moreover, the affidavits of the RCMP officer were prepared and sworn for precisely the purpose sought by the receiver on their notice - to establish a possible use of a number of associated corporations to commit a fraud.

The receiver does not assert any concern in that there was any criminality. It merely reports that receiver allegations have been

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made by the RCMP and others in respect of B&L and some associated corporations.

There would be purpose in cross-examining the RCMP officer, as the affidavits are not being proffered by the receiver to prove the allegations, but only to raise the allegations of a suspect for a further investigation by seeking documents relating to the associated corporations. Such documents may or may not disclose matter of interest to the receiver and joint liquidators of B&L.

It makes perfect sense for the documents to be obtained before any ~~cross~~ examination of Mr. Smith or Mr. Dixit. Mr. Fogal says he has been advised by criminal counsel for Mr. Smith that documents should be compelled rather than voluntarily disclosed in order to provide protection to Mr. Smith in the criminal investigation. The order sought

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by the receiver would compel such protection:

Mr. Toul also contends that there is no evidence of a connection between BBIL and the ~~the~~ corporations from which the receiver wishes to obtain information. I do not agree. The first part of the receiver and the RCMP affidavits contains plenty of information ~~of~~ of such a connection, certainly sufficient to support the order sought.

Mr. Toul also contends that the period of time for which documents should be produced should be limited to the period of time when the BBIL bank account operated. ~~that Mr. Ward for~~ receiver pointed out that just because the bank account ~~truly~~ closed no longer be used does not mean BBIL ^{did not} operated afterwards through other corporations' bank accounts. Moreover, if there are grounds to think

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That a fraud of some type has been committed or may have been committed, I would not resist the order as sought on behalf of Mr. Smith. Conceding the point is not always an easy matter.

In my view, it is just that the order now sought to expand the receiver's powers should be granted.

The receiver also requests an order that a CPL be granted with respect to properties owned in the name of 2341620 Ontario Corporation. It is listed for sale.

The reasons for the CPL are contained in the receiver's first report at pp. 9-10.

The numbered company is one identified in the RCMP affidavits as being operated by Mr. Smith and/or Mr. Dixit.

Mr. Foyes contends that there is no direct evidence that any of the money used to buy

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The property in ~~on~~ March 19, 2013 came from BBL & Thal is not contested. However, the RCMP report discloses a belief that Mann Suet and his wife set up a host of associated companies to ~~make~~ make their illegal activities and flow of funds. The property in business was acquired when BBL was actively involved in the Banner Brothers enterprise. In the months prior to his murder, regular and substantial deposits had been made to the credit of BBL's Isle of Man bank account.

The receiver asserts a proprietary interest in the business property and a constructive trust and then equitable remedies on the basis that the property was purchased and/or improved with money belonging or owing to BBL.

The threshold to be met in respect to an interest in land on a CPL motion is whether there

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has been made out.)

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is a trial issue as to such interest, not whether the plaintiff will likely succeed.

See Perruzza v Spetno 2010 ONSC 841 at para 20 (per Master Svestein). No weight of the evidence must be looked at. In my view see Knoxden Village for Services v Balle (2010), 100 C.P.C. (6th) 176 (per Master Muir).

The balance of convenience favours the granting of the CPL. 234 recently sold another property in which he owned by it jointly with Dixit Holdings Inc, controlled by Mr. Dixit. If the Bagniew Ave property is sold, it is likely that the proceeds will not be available.

Order to go granting leave to issue a CPL against the title to the Bagniew property, and granting leave to amend the Application to add 234 as a party respondent.

The receiver has written to First & Herlitz and to others, including Mr. Smith, requesting documents relative to matters as permitted in the

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order of August 22, 2014. Nothing has been provided. Mr. Fogel said that in because of the concern of Mr. Smith's criminal ~~conviction~~ ^{counsel} should not volunteering information, and that the document request should be made at the examination of Mr. Smith. I do not agree with this approach. The order of August 22, 2014 requires Mr. Smith and his legal advisors to advise the receiver of the existence of properties and books and records relating to the affairs of BSL and to provide copies to the receiver (excluding privileged documents). This is a mandatory order and production of documents pursuant to it is not a voluntary matter. The request by the receiver should be complied with forthwith.

I have signed the order handed to me this morning.

J. M. J.