CITATION: OSC v. Cacoeli Asset Management Inc. et al., 2025 ONSC 1369
COURT FILE NO.: CV-25-00736396-00CL
DATE: 20250228

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

APPLICATION UNDER Section 129 of the *Securities Act*, R.S.O. 1990 c. s.5, as amended

RE: ONTARIO SECURITIES COMMISSION, Applicant

AND:

CACOELI ASSET MANAGEMENT INC., CACOELI CAPITAL INC., CACOELI DUKE WELLINGTON LP, CACOELI LINNWOOD-LOWTHER LP, CACOELI HEIMAN LP, CACOELI ARLINGTON RENTAL LP, CACOELI HOLBORN-CHICOPEE LP, HOLBORN CHICOPEE LP, CACOELI BLOOR OSSINGTON LP, CACOELI YS HIGH YIELD FINANCE LP, CACOELI KENNEDY STEELES LP, CACOELI FIXED INCOME FUND LP, 11530704 CANADA INC., CACOELI GP INC., 10138851 CANADA INC., 11089480 CANADA INC., HOLBORN CHICOPEE GP INC., CACOELI REAL ESTATE OPP GP INC., 11889702 CANADA INC., 2778754 ONTARIO LTD., Respondents

BEFORE: Peter J. Osborne, J.

COUNSEL: *Hansen Wong*, for the Applicant

Cameron Rempel and Caroline Harrell, for the Respondents

David Ullman, for Terra Bona and John/Jane Doe

Matilda Lici and Miranda Spence, for Grant Thornton Limited in its capacity as the Monitor for the Respondent

HEARD: February 28, 2025

ENDORSEMENT

[1] This is an Application by the Ontario Securities Commission ("OSC") for the appointment of a receiver over the Respondents pursuant to section 129 of the *Securities Act*.

[2] Doane Grant Thornton, LLP has been appointed as interim monitor.

[3] The parties jointly request the directions of this Court related to the non-disclosure obligation imposed by sections 16 and 17 of the *Securities Act* (the "*Act*").

[4] Section 16 imposes a non-disclosure obligation on recipients of section 11 investigation orders and transcripts of interviews conducted by the Commission.

[5] Relatively recent amendments to the *Act* provide in section 17(6) that a person appointed to make an investigation under the *Act* (i.e., the Commission), may disclose or produce anything mentioned in subsection (1), but may do so only in connection with a proceeding commenced or proposed to be commenced under the *Act*, or an examination of a witness, including an examination of a witness under section 13.

[6] In this Application, the evidence on which the OSC primarily relies is in the form of an affidavit from a Senior Investigator in the Enforcement Division. That affidavit makes reference to the Commission's section 11 order in respect of the Respondents, and states that the Commission conducted interviews of investors, former employees and former business partners, among others. The affidavit quotes from and summarizes details of the investigation and certain of those interviews, but does not attach the section 11 order or any of the transcripts.

[7] The Respondents requested production of the section 11 order and interview transcripts. The Commission provided them, but did so on the basis that they were subject to the non-disclosure obligations in the *Act*, since the Commission had neither produced them in chief, nor otherwise waived confidentiality.

[8] The obvious problem for the Respondents is that they require the ability to consider the evidence adduced against them to mount a defence, and to do so in a manner that does not contravene the *Act*.

[9] This issue has apparently not arisen previously since there have been relatively few receivership applications brought pursuant to section 129 of the *Act* subsequent to the enactment of the legislative amendments.

[10] To address the issue, the Commission and the Respondents have jointly agreed to proceed according to the following protocol:

a. the Commission will file an additional affidavit attaching the section 11 order and transcripts in full;

b. the affidavit will be filed in redacted form with confidential exhibit pages, to preserve the confidentiality objectives of the *Act* to the extent possible;

c. an unredacted copy of the affidavit will be delivered directly to the Court, which may be referred to by the Court and the parties in respect of the Application;

d. the affidavit will form part of the evidence in chief of the Commission on the hearing of the Application; and

e. any excerpts from the section 11 order or transcripts that are referred to by the Court or the parties in cross examinations, facta, submissions or any endorsement or decision that may be issued, will have the confidentiality that would otherwise be associated with them waived, and they will become part of the record.

[11] I am satisfied that in the circumstances of this case, the proposed protocol as agreed by the Commission and the Respondents is appropriate. It allows the Respondents to make full answer and defence, while ensuring that only necessary information from the section 11 order and transcripts is publicly disclosed. The relevant evidence will be before the Court to enable a determination on the merits of the Application based on a full record on a timely and efficient basis. The alternative to coming to this Court would have been for the parties to jointly seek a separate hearing before the Capital Markets Tribunal for authorization to disclose, when the receivership Application is already pending in this Court.

[12] For all of these reasons, I am satisfied that the proposed protocol is appropriate. To be clear, it means that there will likely be issues that still require resolution or determination. Those are properly addressed by the presiding judge hearing the Application.

[13] I make no determination today about whether, for example, any sealing order may be appropriately made pursuant to section 137(2) of the *Courts of Justice Act* on the basis of the factors set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate*.

[14] In addition, there may be issues that need to be addressed relating to the use at the hearing of the Application of certain compelled evidence from individuals other than the Respondents or their employees (i.e., "whistleblowers" or other witnesses). Section 18 of the *Act* references the use of compelled testimony in prosecution proceedings but has no application to a proposed receivership proceeding brought pursuant to section 129.

[15] Finally with respect to this Application, it was previously scheduled to proceed on March 24, 2025. As a result of certain personal matters affecting counsel and the evidentiary matters addressed above, the Respondents will not be ready to proceed on that date. The parties have agreed that a brief adjournment is appropriate, and I endorse that agreement in the circumstances.

[16] The Commission takes the position that it is ready to proceed, but consents to the adjournment on the following terms which are agreed to by the Respondents:

a. the interim monitorship currently in place remains effective pending the hearing of the Application on the merits according to the terms already ordered (a term to which the current Monitor also consents); and

b. the Respondents confirm, as they have done in Court today, that there are no pending refinancing or other transactions that will close, or that the Respondents would seek to close, pending the return of the Application.

[17] On the above basis, the adjournment is granted. The March 24, 2025 hearing date is vacated. The Application will proceed on the merits on April 22, 2025 commencing at 10 AM and continuing as necessary for a full day at the Courthouse. All counsel have agreed to this date, and to have all materials completed, exchanged and filed in advance.

Osborne J.