



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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Citation: *Bridging Finance Inc (Re)*, 2024 ONCMT 12
Date: 2024-05-17
File No. 2022-9

**IN THE MATTER OF
BRIDGING FINANCE INC., DAVID SHARPE, NATASHA SHARPE and
ANDREW MUSHORE**

**REASONS FOR DECISION
(Rules 24(2) and 34(1) of the *Capital Markets Tribunal Rules of Procedure*)**

Adjudicators: Russell Juriansz (chair of the panel)
Timothy Moseley
Sandra Blake

Hearing: By videoconference, May 1, 2024

Appearances: Mark Bailey For Staff of the Ontario Securities
Adam Gotfried Commission
Lawrence Thacker For Natasha Sharpe
Jonathan Chen
Mari Galloway
Erin Pleet For the receiver of Bridging Finance Inc.
No one appearing for David Sharpe or Andrew Mushore

REASONS FOR DECISION

1. OVERVIEW

- [1] On February 13, 2024, after the close of evidence, the tribunal set a timetable for the completion of this long and complex merits hearing. The respondents' written submissions were to be filed by May 6, and oral submissions were scheduled for May 24 and 28.
- [2] On May 1, 2024, Natasha Sharpe brought a motion to vary the timetable for closing submissions, because of her current inability to pay outstanding or anticipated further legal fees. Natasha characterized her indefinite adjournment request as a "short pause". Lenczner Slaght LLP sought, as alternative relief, to be removed as Natasha's counsel of record due to unpaid legal fees. When the timetable was originally set, counsel did not hint that there might be a request for the schedule to be changed because of outstanding legal fees.
- [3] We denied the request to vary the timetable for closing submissions as requested. However, we ordered that all respondents file written closing submissions by noon on May 15 rather than May 6, the date originally agreed upon. We dismissed the motion to remove Lenczner Slaght LLP as counsel of record for Natasha. These are our reasons.

2. BACKGROUND

- [4] Lenczner Slaght LLP is counsel for Natasha and has represented her since this proceeding began on March 31, 2022.
- [5] In August 2021, in the proceeding in the Superior Court of Justice in which the receiver for Bridging Finance Inc. had been appointed, Natasha and the receiver agreed to an order (**Consent Preservation Order**) freezing all of Natasha's assets worldwide, subject to certain terms including an exclusion to pay reasonable living expenses and reasonable legal fees and disbursements. Up to May 4, 2023, the receiver approved and paid legal fees that Natasha incurred.
- [6] Since then, Lenczner Slaght LLP has accrued approximately \$900,000 in fees with respect to this and other proceedings. Those fees remain unpaid. The

receiver has taken the position that any payments for legal fees must come out of her own assets, excluding assets that are traceable to Bridging.

- [7] On April 10, 2024, Natasha asked the Court to approve Lenczner Slaght LLP's unpaid invoices as being reasonable. The Court found the legal fees to be reasonable but noted that it was still unclear from where the fees would be paid.¹
- [8] As of the hearing of this motion, counsel for Natasha was in the process of trying to schedule time before the Court to resolve the payment issue (including, potentially, by mediation) but no dates had yet been set.

3. ANALYSIS

3.1 Natasha's request for an adjournment

- [9] Rule 34(1) of the Capital Markets Tribunal's *Rules of Procedure* (the **Rules**) provides that every merits hearing shall proceed on the scheduled dates unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".
- [10] The standard in rule 34(1) is a "high bar" that reflects the important objective set out in rule 1, that Tribunal proceedings be conducted in a "just, expeditious and cost-effective manner". We must balance that objective against the parties' ability to participate meaningfully in the hearing and present their case.²
- [11] A determination about whether to grant a request to adjourn a merits hearing is necessarily dependent on the particular facts and circumstances of the case.³
- [12] Counsel for Natasha submits that an adjournment is needed so that there is time to argue pending motions and to take other steps required to gain access to Natasha's assets, to allow Natasha to pay legal fees owed and to pay a retainer for fees and disbursements required to complete all remaining steps in this and other proceedings.
- [13] The Commission submits that there are no Tribunal decisions granting an adjournment for non-payment of legal fees at any stage of a proceeding, let

¹ *Ontario Securities Commission v Bridging Finance Inc*, 2024 ONSC 2291 at para 49

² *First Global Data Ltd (Re)*, 2022 ONCMT 23 (**First Global**) at paras 7 and 8

³ *First Global* at para 8

alone cases where an adjournment was granted during or near the conclusion of a merits hearing. It further submits that even if non-payment of legal fees could, in extraordinary circumstances, justify an adjournment, the circumstances of this case dictate that Natasha's adjournment request should be rejected.

[14] Specifically, Natasha has failed to take timely steps to deal with this issue. Back in December 2022, the receiver expressly required that Natasha access only those funds that were not traceable back to Bridging. That was months before the merits hearing began. It was clear at that time that if the receiver's position were to be upheld, Natasha would be in the exact situation in which she now finds herself.

[15] Because of Natasha's delay in seeking to resolve the issue, we are not satisfied that the unpaid legal fees in this case meet the test of "exceptional circumstances" for an adjournment.

3.2 Lenczner Slaght's request to be removed as Natasha's representative

[16] We turn now to consider the unpaid fees in the context of Lenczner Slaght's request to be removed as Natasha's representative.

[17] Rule 24(2) of the *Rules* gives the Tribunal discretion to order the removal of a representative as the representative of record.

[18] As Commission counsel noted, there are no Tribunal cases dealing with opposed requests to remove counsel from the record. We therefore consider other relevant case law.

[19] Courts have held that such motions go beyond the interests of the client and the lawyer seeking to get off the record and include "the impact on the other parties to the proceedings and the effect on the administration of justice."⁴

[20] In *Todd Family Holdings Inc. v. Gardiner*, the Court considered a request by counsel to be removed from the record mid-trial for non-payment of fees. The Court rejected counsel's request, finding that it "would not only cause significant

⁴ 25162116 Ontario Ltd (Numbrs) v Abledocs Inc, 2023 ONCA 727 at para 6

prejudice to the clients but ... would bring the administration of justice into serious disrepute.”⁵

- [21] Counsel for Natasha submits that this proceeding could possibly have permanent, and significantly life-altering consequences for Natasha and her minor son. They further submit that there is no possibility that Natasha will be able to retain any other legal counsel because she has no assets available to be used to pay any other legal counsel.
- [22] The Commission submits that since Natasha did not attend, watch or follow this merits hearing (as stated in her motion materials), she would likely seek a lengthy adjournment if her counsel were removed from the record.
- [23] Counsel has proceeded for more than a year confident their fees would eventually be paid. In the year during which the receiver has refused to approve counsel’s fees, there has been, until now, no effort to obtain a court order that they be paid.
- [24] We note, as well, that we have not been told that counsel’s fees will not be paid. We have been told only that it is necessary to obtain a court order for the outstanding fees to be paid, and that no source of payment that the receiver would approve has been identified. We also consider that while defence counsel and the receiver are committed to obtaining a court resolution quickly, an appeal of any court decision is possible. There is no certainty that the “pause” will be as short as counsel anticipates.
- [25] Natasha will remain represented until the completion of this merits hearing, because we are not prepared to allow counsel to withdraw. It is not feasible for Natasha to represent herself or to obtain other counsel now, at this stage of the merits hearing, without causing significant disruption and delay. The interests of all the other parties and of the administration of justice are to complete this merits hearing as scheduled, particularly because it has already been much delayed.
- [26] We conclude that defence counsel’s interest does not outweigh the harm to the administration of justice that would be occasioned by granting the indefinite

⁵ *Todd Family Holdings Inc v Gardiner*, 2015 ONSC 6590 at para 15

"pause" sought. We do not allow counsel to withdraw. As counsel will remain on the record, no "pause" in the timetable is necessary.

3.3 Confidentiality

[27] Natasha Sharpe also requested that the unredacted version of her Motion Record be kept confidential and only the redacted version be available to the public. As none of the parties objected, and to protect commercially sensitive information, we granted this request.

4. CONCLUSION

[28] For these reasons we ordered:

- a. Natasha Sharpe's motion to vary the timetable is dismissed;
- b. Lenczner Slaght LLP's request to be removed as counsel of record is dismissed;
- c. all respondents shall each serve and file their written closing submissions by no later than noon on May 15, 2024;
- d. pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019, SO 2019, c 7, Sch 60* and Rule 8(4) of the Tribunal's *Rules of Procedure*:
 - i. Exhibit 1, the unredacted Motion Record of Natasha Sharpe is confidential; and
 - ii. Exhibit 2, the redacted Motion Record of Natasha Sharpe is available to the public.

Dated at Toronto this 17th day of May, 2024

"Russell Juriansz"

Russell Juriansz

"Timothy Moseley"

Timothy Moseley

"Sandra Blake"

Sandra Blake