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Citation: *Kallo (Re)*, 2024 ONCMT 13
Date: 2024-05-17
File No. 2023-12

**IN THE MATTER OF
KALLO INC., JOHN CECIL and SAMUEL PYO**

**REASONS FOR DECISION
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Adjudicators: James Douglas (chair of the panel)
Russell G. Juriansz
Dale R. Ponder

Hearing: April 25, 2024

Appearances: Sarah McLeod For the Commission
John M. Piccone For Samuel Pyo

REASONS FOR DECISION

I. OVERVIEW

- [1] These are the reasons for our order, which was made orally on April 25, 2024, at the close of the hearing of a motion brought by Samuel Pyo.
- [2] Pyo moved for an order striking out the Commission's statement of allegations (**SOA**) and dismissing or staying the proceeding against him as an abuse of process. In his motion to strike, Pyo contended that the Commission's allegations against him, even if taken to be true, present an insufficient basis to establish he had committed the alleged breaches of the *Securities Act* .
- [3] We ordered the Commission to provide particulars of the material facts relied upon to support the allegation that Pyo, in his personal capacity, breached section 126.1(1)(b) of the Act. Section 126.1(1)(b) prohibits a person from directly or indirectly engaging or participating "in any act, practice or course of conduct relating to securities" that "perpetrates a fraud on any person or company". We declined to order the Commission to provide particulars of the allegation that Pyo made false and misleading statements during the course of the Commission's investigation contrary to s.122(1)(a) of the Act.

II. BACKGROUND

- [4] This matter is an enforcement proceeding in which the Commission seeks various orders in the public interest pursuant to s. 127(1) of the Act. Rule 14(1) and Appendix A of the Tribunal's Rules of Procedure (the **Rules**) prescribe that the SOA (now referred to as an Application for Enforcement Proceeding in the Rules that came into effect on March 19, 2024), sets out "each allegation of material fact relied on to substantiate the alleged breaches of Ontario securities ... law ... justifying an order under s. 127(1) of the [Act]".
- [5] The SOA alleges that Pyo, along with the other respondents in this matter, misled investors and committed fraud. It states that the corporate respondent, Kallo Inc., entered into contracts to provide €5.9 billion of healthcare goods and services to five African countries, that the respondents "knew or reasonably ought to have known that the contracts were not real, and that the contracts could not and would not be performed."

[6] Counsel for Pyo points out that while the SOA makes allegations about what Pyo knew, it fails to set out any act, practice or course of conduct relating to securities in which Pyo engaged or participated. He observes that where the SOA does set out acts done in the furtherance of the fraud, it attributes those acts only to Kallo and its CEO, the respondent John Cecil.

III. ANALYSIS AND CONCLUSION

[7] When asked to do so, Commission counsel did not identify any specific allegations of acts by Pyo in the SOA; instead, she submitted that the SOA's allegations against Kallo should be understood as allegations against Pyo. She submitted that this was logical because Pyo, as one of Kallo's only two full time employees, must have been heavily involved in carrying out the acts of Kallo alleged in the SOA. We reject this argument, both on a plain reading of the SOA and as a matter of legal principle. There is no allegation in the SOA that Pyo and Kallo are one and the same "person or company" for the purposes of s. 126.1(1)(b) of the Act and, indeed, general principles of corporate law presume the contrary: see *Salomon v Salomon*¹ which stands for the principle that corporations are legally separate and distinct from their shareholders, officers and directors. We therefore conclude the SOA fails to set out the material facts upon which it relies to support the allegation that Pyo breached s. 126.1(1)(b) of the Act.

[8] In oral argument, counsel for Pyo recognized that a stay is a remedy of last resort and did not press for one. Instead, he invoked s. 23(1) of the *Statutory Powers Procedures Act*, s. 26 of the Act, and rule 36(1)(a) of the Tribunal's Rules to urge that the SOA should be struck out against Pyo. Rule 36(1)(a) allows the Tribunal to dismiss an application without a hearing on the ground that it is frivolous, vexatious, or commenced in bad faith. Counsel for Pyo also referred extensively to the *Rules of Civil Procedure*² that govern the striking of a pleading in a civil action. We did not find reference to the civil rules helpful. The Tribunal now has detailed Rules governing its procedures and the exercise of its

¹ *Salomon v Salomon*, [1896] UKHL 1, [1897] AC 22

² *Rules of Civil Procedure*, RRO 1990, Reg 194

jurisdiction. Where the Tribunal's Rules deal with a matter, it is those we must apply.

- [9] While there may well be a case in which the deficiencies in a SOA might warrant a panel exercising its discretion to dismiss a proceeding or application on the grounds that it is frivolous or vexatious, we do not find that such an order is warranted at this stage. In this case the deficiencies can be cured by particulars that will ensure fairness in the proceeding is preserved. We are therefore satisfied the appropriate rule to apply in this case is Rule 22(2) of the Tribunal's Rules. Rule 22(2) provides:

At any stage of the proceeding, the Tribunal may order an applicant to provide particulars necessary for a satisfactory understanding of the subject of the proceeding, including:

...

(a) the grounds on which a remedy or order is being sought;
and

(b) a general statement of the facts being relied on.

- [10] As the SOA fails to provide Pyo with a satisfactory understanding of the grounds on which the Commission is seeking an order finding him in breach of 126.1(1)(b), we ordered that:

1. within 30 days of April 26, 2024, the Commission shall provide particulars of the material facts relied upon to support the allegation that Pyo, in his personal capacity, breached subsection 126.1(1)(b) of the Act; and

2. this Order is made without prejudice to Pyo renewing the Motion to Strike or to Pyo otherwise seeking directions or further relief from the Tribunal after receiving the particulars provided by the Commission.

- [11] We take a different view of Pyo's contention that the SOA fails to provide him with a satisfactory understanding of the Commission's allegation that he made false or misleading statements to the Commission's investigators contrary to s. 122(1)(a) of the Act.

- [12] The SOA, in paragraph 41, alleges that Pyo maintained that the 2020 contracts were authentic, made misleading statements regarding the negotiations of the 2020 contracts, stated that Kallo had conversations with African government officials, made misleading statements about his own and Kallo's financial statements, claimed that he did not receive any payments from Kallo, stated that Kallo did not make payments to any of its partners or agents, and said that he was not aware of any issues with the authenticity of the 2020 contracts.
- [13] Recognizing that the Commission is not required to provide notice of the evidence that it intends to call, we are satisfied these allegations enable Pyo to understand and respond to the s. 122(1)(a) case against him.

Dated at Toronto this 17th day of May, 2024.

"James Douglas"
James Douglas

"Russell G. Juriansz"
Russell G. Juriansz

"Dale R. Ponder"
Dale R. Ponder