



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- and -

**IN THE MATTER OF
MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL,
FIC REAL ESTATE PROJECTS LTD., FIC FORECLOSURE FUND LTD.
and WBIC CANADA LTD.**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. Michael Patrick Lathigee (“Lathigee”), Earle Douglas Pasquill (“Pasquill”), FIC Real Estate Projects Ltd. (“FIC Projects”), FIC Foreclosure Fund Ltd. (“FIC Foreclosure”) and WBIC Canada Ltd. (“WBIC”) (collectively, the “Respondents”) are subject to an order made by the British Columbia Securities Commission (the “BCSC”) dated March 16, 2015 (the “BCSC Order”) that imposes sanctions, conditions, restrictions or requirements upon them.
2. In its findings on liability dated July 8, 2014 (the “Findings”), a panel of the BCSC (the “BCSC Panel”) found that each of the Respondents perpetrated a fraud in contravention of section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the “BC Act”). Further, Lathigee, Pasquill and FIC Foreclosure were found to have perpetrated a second fraud in contravention of section 57(b) of the BC Act.

3. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the “Act”).

II. THE BCSC PROCEEDINGS

Background

4. The conduct for which the Respondents were sanctioned took place between approximately February and August of 2008 (the “Material Time”).
5. During the Material Time, Lathigee and Pasquill were residents of British Columbia. Lathigee and Pasquill jointly directed and controlled a group of companies called Freedom Investment Club (“FIC Group”). Lathigee and Pasquill were the sole individuals directing the affairs of the FIC Group, which included FIC Projects, FIC Foreclosure, WBIC (collectively, the “Corporate Respondents”).
6. Lathigee and Pasquill were directors and officers of all of the companies in the FIC Group, including the Corporate Respondents. Further, Lathigee and Pasquill were, respectively, the CEO and president of FIC Projects and WBIC, and the president and secretary of FIC Foreclosure.
7. FIC Group was Lathigee’s concept. The idea was to educate investors about the investment and provide opportunities to investors to participate in FIC Group offerings. The meetings typically had a so-called educational component accompanied by a presentation, typically made by Lathigee about current investment opportunities.
8. FIC Group’s primary business was real estate development. Several different FIC Group companies were involved in various development projects. FIC Group’s largest development project was Genesis on the Lakes (“Genesis”), a residential development near Edmonton, Alberta. Genesis was being developed in two phases. The first phase was divided into two sub-phases, 1A and 1B. Phase 1A of the Genesis project was financed by credit facilities and loans from the Toronto-Dominion Bank (“TD”) to an FIC Group company called Genesis on the Lakes Ltd.

The TD Credit Facility

9. FIC Group's credit facility at TD totalled \$22.1 million. Security for the facility included a \$22.1 million first mortgage against the Genesis project lands, an assignment of an investment portfolio held by a FIC Group company called 0760838 BC Ltd ("076") and an assignment of \$3 million of FIC Group term deposits and credit balances.
10. FIC Group was required to maintain the market value of the 076 investment portfolio at a minimum market value of \$9 million for the life of the Genesis project. The TD credit facility also required that no subsequent encumbrances be filed on the Genesis lands subject to the mortgage.
11. At the end of January 2008, the market value of the 076 portfolio was \$7.1 million, a deficiency of nearly \$2 million. By the end of May 2008, the market value had fallen to \$4.9 million, a deficiency of over \$4 million. The evidence indicated that only on one day during the Material Time was the portfolio value close to the \$9 million requirement.
12. On February 7, 2008, contractors registered builders' liens totalling \$5 million against Phase 1 of the Genesis project.
13. From March to May of 2008, Lathigee, Pasquill and other members of the FIC Group management team repeatedly expressed concern over the status of the credit facility.
14. The BCSC Panel found that the sustained material shortfall in the market value of the 076 investment portfolio and filed liens were a material default of the requirements under the TD credit facility. The BCSC Panel further found that the FIC Group was exposed to the significant risk that TD might decide to call the loans immediately, and if it had done so, the FIC Group would have immediately become insolvent.

Genesis Project Status

15. At the end of January 2008, the FIC Group combined financial statements showed that Genesis contractors were owed \$9.6 million for work completed to that date. By the end of February 2008, the Genesis contractor had billed at least \$8 million for work done ahead of the project budget schedule, relating to the second phase of the project, whereas

the TD credit facility was only for the first phase. There was no funding for phase two, and the contractor was looking for payment.

16. FIC Group management repeatedly expressed their concerns about this cost overrun. Lathigee proposed an offering to FIC Group members for equity participation in Genesis. The equity idea was not pursued.
17. The BCSC Panel found that Genesis incurred \$10 million in cost overruns that FIC Group could not account for, and that there was no other source to fund the \$8 million in contractor invoices that did not qualify for funding under the TD credit facility. Further, the BCSC Panel found that the profit expectations for Genesis were diminished, with no profit expectation for the first phase of the Genesis project, and that the expectations for the second phase were cut in half, and could have been zero.

Cash Flow Problems

18. Starting in January 2008, FIC Group management began to express concerns over the FIC Group's cash flow position. Up to July 2008, FIC Group's management repeatedly expressed concern through a series of e-mail exchanges over incoming liabilities and their inability to meet their financial obligations.
19. Starting in February 2008, FIC Group management raised funds through FIC Foreclosure. Starting in March 2008, funds were raised through a FIC Projects distribution, and a further distribution commenced in April 2008 through WBIC.
20. As funds from the distributions made by the FIC Group entities flowed in, Lathigee and Pasquill diverted them towards meeting FIC Group's existing liabilities, including funding the 076 investment portfolio deficiency. Funds were distributed among other FIC Group entities according to where cash was needed through a web of inter-company loan arrangements.
21. Despite the persistent cash shortfall during the Material Time, Lathigee sought further funds to invest in foreclosures.

22. The BCSC Panel found that the FIC Group was experiencing severe cash flow problems during the Material Time, and that management had given their close attention to the cash flow issues throughout the Material Time, demonstrating concern and crisis through their communications.

Important Facts

23. The BCSC Panel found that the defaults on the TD credit facility, the Genesis project status and cash flow problems in the FIC Group entities were each important facts. In combination, these facts further revealed the important fact that there was a reasonable possibility that FIC Group could become insolvent during the Material Time.

The FIC Projects and WBIC Distributions

24. On March 7, 2008, Lathigee held a conference call and webcast to promote a distribution by FIC Projects, describing it as a “cash flow opportunity”.
25. During that conference call, Lathigee stated that the FIC Group had over \$100 million in real estate assets and was seeking to raise \$10 million. The promissory notes offered paid annual interest of 12 to 15 percent depending on the investment amount. Lathigee further told conference call participants that the purpose of the distribution was to enable FIC to more quickly develop its Edmonton real estate projects.
26. The reference to the \$100 million in assets did not account for encumbrances associated with those assets, which were approximately \$50 million at the time.
27. There was no mention of the FIC Group’s financial condition, namely its severe cash flow problems during the conference call. Nor was there any disclosure of the FIC Group’s financial condition in the offering memorandum for the WBIC distribution.
28. In March, April and July of 2008, FIC Projects issued promissory notes to 267 investors for proceeds of \$9.8 million.
29. In April and May of 2008, WBIC issued Class A shares to 100 investors for proceeds of \$2 million.

30. The BCSC Panel found that none of the funds raised from the FIC Projects distribution were used towards anything that would produce cash flow for investors. Instead, \$5 million was used to top up the 076 investment portfolio and to pay Genesis contractors to remove the liens, \$3.4 million was split between funds returned to FIC Foreclosure and funds held in reserve to meet interest payments on the promissory notes themselves, with the remaining \$1.6 million going to overhead and third-party payments.

Misuse of Funds by FIC Foreclosure

31. From February to April 2008, FIC Foreclosure raised \$1.5 million through the distribution of Class A shares to 39 investors under the accredited investor exemption. From April to June 2008, FIC Foreclosure raised another \$8.4 million through the distribution of Class A shares to another 292 investors under the offering memorandum exemption.
32. In the subscription agreements, offering memorandum and conference call held by Lathigee, investors were told that FIC Foreclosure was formed expressly for the purpose of investing in foreclosure properties in the US residential real estate market. Lathigee further told investors that there were large inventories available and FIC Foreclosure had to act quickly and also that FIC Foreclosure was ready to act and on the verge of making a number of acquisitions.
33. Lathigee also told investors during the conference call that FIC Foreclosure could earn an annualized rate of return of 132% over a period of six months.
34. Of the \$9.9 million raised, only \$1.4 million was spent on foreclosure properties and another \$751,000 on rental properties and tax liens. The funds were never used for their stated purpose. Most of the funds, about \$7.8 million, were transferred to other FIC Group companies in order to, among other things, pay existing liabilities and overhead expenses of the FIC Group.

The BCSC Findings

35. In its Findings, the BCSC Panel concluded that:

- a. Lathigee, Pasquill, FIC Foreclosure, FIC Projects and WBIC perpetrated a fraud, contrary to section 57(b) of the BC Act when they raised \$21.7 million from 698 investors without disclosing to those investors the important fact of FIC Group's financial condition; and
- b. Lathigee, Pasquill and FIC Foreclosure perpetrated a fraud, contrary to section 57(b) of the BC Act when they raised \$9.9 million from 331 investors in FIC Foreclosure for the purpose of investing in foreclosure properties and instead used most of the funds to make unsecured loans to other FIC Group companies.

The BCSC Order

36. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:
 - a. upon the Corporate Respondents:
 - i. under sections 161(1)(b)(i), (d)(v) and (c) of the BC Act, respectively:
 1. all persons permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts of the Corporate Respondents;
 2. the Corporate Respondents are permanently prohibited from engaging in investor relations activities;
 3. the exemptions set out in the BC Act, the regulations or any decision as defined in BC Act, do not apply to the Corporate Respondents permanently;
 - ii. under section 161(1)(g) of the BC Act, that:
 1. FIC Projects pay to the BCSC \$9.8 million;
 2. FIC Foreclosure pay to the BCSC \$9.9 million; and

3. WBIC pay to the BCSC \$2 million;
- b. upon Lathigee:
- i. under sections 161(1)(d)(i), (b)(ii), (d)(ii) to (v) and (c) of the BC Act, respectively:
 1. Lathigee resign any position he holds as a director or officer of an issuer or registrant;
 2. Lathigee cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts, except that he may trade and purchase them for his own account through a registrant if he gives the registrant a copy of the BCSC Order;
 3. Lathigee is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, except that he may act as a director or officer of one issuer whose securities are solely owned by him or by him and his immediate family members;
 4. Lathigee is permanently prohibited from becoming or acting as a promoter;
 5. Lathigee is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 6. Lathigee is permanently prohibited from engaging in investor relations activities; and
 7. except for those exemptions necessary to allow Lathigee to trade or purchase securities and exchange contracts for his own account, the exemptions set out in the BC Act, the regulations or any decision as defined in the BC Act, do not apply to Lathigee permanently;

- ii. under section 161(1)(g) of the BC Act, that Lathigee pay to the BCSC \$21.7 million; and
 - iii. under section 162 of the BC Act, that Lathigee pay to the BCSC an administrative penalty of \$15 million;
- c. upon Pasquill;
- i. under sections 161(1)(d)(i), (b)(ii), (d)(ii) to (v) and (c) of the BC Act, respectively:
 - 1. Pasquill resign any position he holds as a director or officer of an issuer or registrant;
 - 2. Pasquill cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts, except that he may trade and purchase them for his own account through a registrant if he gives the registrant a copy of the BCSC Order;
 - 3. Pasquill is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - 4. Pasquill is permanently prohibited from becoming or acting as a promoter;
 - 5. Pasquill is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - 6. Pasquill is permanently prohibited from engaging in investor relations activities; and
 - 7. except for those exemptions necessary to allow Pasquill to trade or purchase securities and exchange contracts for his own account, the exemptions set out in the BC Act, the regulations or any decision as defined in the BC Act, do not apply to Pasquill permanently;

- ii. under section 161(1)(g) of the BC Act, that Pasquill pay to the BCSC \$21.7 million; and
- iii. under section 162 of the BC Act, that Pasquill pay to the BCSC an administrative penalty of \$15 million;
- d. FIC Projects, Lathigee and Pasquill be jointly and severally liable for \$9.8 million ordered under section 161(1)(g) of the BC Act and that no amount in excess of \$9.8 million be paid by them under the BCSC Order;
- e. FIC Foreclosure, Lathigee and Pasquill be jointly and severally liable for \$9.9 million ordered under section 161(1)(g) of the BC Act and that no amount in excess of \$9.9 million be paid by them under the BCSC Order; and
- f. WBIC, Lathigee and Pasquill be jointly and severally liable for \$2 million ordered under section 161(1)(g) of the BC Act and that no amount in excess of \$2 million be paid by them under the BCSC Order.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 37. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.
- 38. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 39. Staff allege that it is in the public interest to make an order against the Respondents.
- 40. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

41. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

DATED at Toronto, this 8th day of November, 2016.