



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Paramount (Re), 2020 ONSEC 9

Date: 2020-03-23

File No. 2019-12

**IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION, SILVERFERN SECURED
MORTGAGE FUND, SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND, GTA PRIVATE CAPITAL INCOME LIMITED
PARTNERSHIP, SILVERFERN GP INC., TRILOGY MORTGAGE GROUP INC., MARC
RUTTENBERG, RONALD BRADLEY BURDON and MATTHEW LAVERTY**

**REASONS FOR DECISION
(Section 25.0.1(a) of the *Statutory Powers
Procedure Act*, RSO 1990, c S.22)**

Hearing: In writing

Decision: March 23, 2020

Panel: Timothy Moseley Vice-Chair and Chair of the Panel
Garnet W. Fenn Commissioner
Heather Zordel Commissioner

Submissions received from: Mark Bailey For Staff of the Ontario Securities Commission
Vivian Lee

Ronald Bradley Burdon On his own behalf

Matthew Laverty On his own behalf

No submissions received from other respondents

REASONS AND DECISION

I. OVERVIEW

- [1] This decision and these reasons relate to the continuation of a merits hearing that has been interrupted by the COVID-19 pandemic. The hearing will proceed. Staff of the Commission is to complete its case in writing, following which the parties will be invited to make submissions as to next steps.

II. BACKGROUND

- [2] The merits hearing in this proceeding began on March 10, 2020, and continued over three days. Staff called some but not all of its witnesses. When the hearing adjourned on March 12, it was to resume on March 23. None of the respondents has attended or participated in the merits hearing to date, although the respondent Matthew Lavery was scheduled to testify in person on March 26.
- [3] The intervening days have seen the implementation of increasingly strict social distancing measures in response to the COVID-19 pandemic. These are extraordinary circumstances with many consequential effects, including on this proceeding and on other matters before the Commission.
- [4] On March 17, the Commission advised the parties that it would not be holding any in-person hearings until at least April 30, 2020. Accordingly, the merits hearing in this proceeding cannot proceed as scheduled.
- [5] The Commission invited submissions from the parties as to whether the proceeding should be adjourned, or if not then how it should proceed. Options included the submission of evidence in writing, and/or continuing the hearing by telephone or videoconference.
- [6] Staff submits that we should not continue the merits hearing by teleconference. Staff identifies several practical issues, including the risk of participants speaking over each other or not being able to interject where necessary, and the likely challenges associated with the introduction of documents as exhibits.
- [7] Staff proposes to deliver the rest of its evidence in writing, on or before April 13, 2020. That evidence would include the written report of Staff's proposed expert (Mr. Leon Dadoun) and an affidavit from each of Staff's other witnesses. Staff submits that this option would allow the hearing to proceed expeditiously under the circumstances.
- [8] Mr. Lavery and the respondent Ronald Bradley Burdon submitted that there is no urgency to the matter and that the hearing should be adjourned. No other respondents replied to the invitation to make submissions.

III. ANALYSIS AND CONCLUSION

- [9] We agree with Staff's submission that the merits hearing should not proceed by teleconference. The number of individuals (panel members, registrar, witnesses, parties, counsel, and court reporter) and the volume of documents make that option impractical in this instance, at this time.

- [10] We disagree with Mr. Laverty's and Mr. Burdon's submission that we should simply adjourn the hearing. Staff's proposed manner of continuing, *i.e.*, by submitting evidence in writing, is permissible in any proceeding (with or without the constraints imposed by the current pandemic), is a common means of making hearings as efficient as possible, and causes no prejudice to the respondents.
- [11] Once the respondents receive Staff's written evidence, they will have the opportunity to decide whether to cross-examine any of Staff's witnesses, and if so which ones. If cross-examination is to take place, appropriate arrangements can be made to do so by videoconference.
- [12] Then, as a next step, whether there has been any cross-examination or not, the respondents can decide whether they want to adduce evidence on their own behalf. They can be permitted to do so, subject to all of the usual requirements regarding advance disclosure of anticipated evidence.
- [13] Proceeding as Staff proposes is consistent with the public interest in bringing the merits hearing to a timely and appropriate conclusion, in a manner that preserves the respondents' right to procedural fairness.
- [14] One issue that the parties did not address in their brief written submissions is the testimony of Staff's proposed expert, Mr. Dadoun. As has been addressed earlier in this proceeding, it remains to be determined whether Mr. Dadoun should be qualified as an expert witness, and if so, to what extent. Accordingly, our decision contemplates an opportunity for the parties to address this question.
- [15] We therefore decide that the merits hearing shall continue according to the following schedule, and on the following terms and conditions:
- a. on or before April 13, 2020, Staff shall serve on all other parties and file:
 - i. an affidavit of Leon Dadoun, attaching his expert report;
 - ii. written submissions regarding the qualification of Mr. Dadoun as an expert witness; and
 - iii. affidavits from each of Staff's remaining witnesses;
 - b. on or before April 27, 2020:
 - i. any respondent who objects to Staff's proposed qualification of Mr. Dadoun as an expert witness shall serve on all other parties and file written submissions in support of that objection;
 - ii. any respondent who does not object to Staff's proposed qualification of Mr. Dadoun as an expert witness, but who wishes to cross-examine Mr. Dadoun, shall so indicate in writing; and
 - iii. any respondent who wishes to cross-examine any of Staff's remaining witnesses (whose testimony was received in writing) shall so indicate in writing.
- [16] All written materials may be served and filed by email.
- [17] Following delivery of Staff's materials on or before April 13, 2020, any party may apply to modify the above. Absent further order, the Commission will, in due

course following April 27, take appropriate steps in response to the parties' submissions.

Dated at Toronto this 23rd day of March, 2020.

"Timothy Moseley"

Timothy Moseley

"Garnet W. Fenn"

Garnet W. Fenn

"Heather Zordel"

Heather Zordel