



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Paramount (Re), 2020 ONSEC 12

Date: 2020-05-19

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 AND DECISION

Hearing: In Writing

Decision: May 19, 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

Matthew Laverty On his own behalf

No submissions received from other respondents

REASONS AND DECISION

I. OVERVIEW

- [1] The COVID-19 pandemic interrupted the merits hearing in this proceeding, at a point when Staff of the Ontario Securities Commission (the **Commission**) had called some but not all of its witnesses. Following a decision of this hearing panel on March 23, 2020,¹ Staff delivered the rest of its evidence in the form of affidavits from the following witnesses:
- a. Leon Dadoun, Staff's proposed expert regarding mortgage underwriting;²
 - b. Kevin Dusseldorp, a Forensic Accountant in the Commission's Enforcement Branch;³
 - c. François Collat, the former Chief Financial Officer of the respondent Paramount Equity Financial Corporation (**Paramount**);⁴
 - d. David Ross, a former director of the respondent Trilogy Mortgage Group Inc.;⁵
 - e. an investor, J.C.R.;⁶ and
 - f. an investor, M.C.⁷
- [2] We sought submissions from the parties as to the use we ought to make of the opinion evidence contained in the affidavit of Mr. Dadoun, Staff's proposed expert. Staff provided written submissions. No other party responded. In the absence of any challenge to Mr. Dadoun's qualifications as an expert or to the scope of his opinion evidence, we will admit that opinion evidence, subject to the limitations described below.
- [3] We also asked that the respondents indicate whether they intended to cross-examine any of the witnesses mentioned above. The respondent Matthew Laverty was the only respondent who advised of such an intention. Mr. Laverty intends to cross-examine Mr. Dusseldorp and Mr. Collat. We provide directions below as to next steps.

II. OPINION EVIDENCE OF LEON DADOUN

A. Introduction

- [4] Mr. Dadoun's brief affidavit attaches his expert report dated November 18, 2019,⁸ and his *curriculum vitae*. Staff asks us to accept Mr. Dadoun's opinions, which are expressed as answers to questions posed by Staff to Mr. Dadoun.

¹ *Paramount (Re)*, 2020 ONSEC 9, (2020) 43 OSCB 3056

² We have marked Mr. Dadoun's affidavit sworn April 9, 2020, as Exhibit 82 in this hearing

³ We have marked Mr. Dusseldorp's affidavit sworn April 13, 2020, as Exhibit 83 in this hearing

⁴ We have marked Mr. Collat's affidavit sworn April 13, 2020, as Exhibit 84 in this hearing

⁵ We have marked Mr. Ross's affidavit sworn April 9, 2020, as Exhibit 85 in this hearing

⁶ We have marked the affidavit of J.C.R., sworn April 9, 2020, as Exhibit 86 in this hearing

⁷ We have marked the affidavit of M.C., sworn April 9, 2020, as Exhibit 87 in this hearing

⁸ *Expert Report of Leon Dadoun, CA, CPA* (Exhibit A to the affidavit of Leon Dadoun marked as Exhibit 82 in this hearing) (**Dadoun Report**)

- [5] Opinion evidence is generally inadmissible. In order to have us make an exception to that rule, and in the absence of any rule that would otherwise exclude Mr. Dadoun's opinion evidence, Staff must demonstrate that:
- a. Mr. Dadoun's opinion evidence is relevant;
 - b. he is properly qualified to give it; and
 - c. it is necessary, in that it is outside the Commission's experience and knowledge, and would enable us to appreciate the matters at issue due to their technical nature.⁹

[6] We address each of these three criteria in turn.

B. Relevance of Mr. Dadoun's opinion evidence

[7] Admissibility of any evidence depends on, among other things, whether the proffered evidence is relevant to an issue in the hearing.

[8] In this case, Staff alleges that Paramount employed "substandard" mortgage underwriting practices.¹⁰ Much of Mr. Dadoun's opinion evidence explains the risks associated with various types of mortgages, describes industry practices relating to the underwriting of mortgages, and assesses various policies and practices of some respondents against those industry practices. It is clear, and the respondents do not dispute, that Mr. Dadoun's opinion evidence on these topics is relevant.

[9] While some of Mr. Dadoun's testimony goes beyond the topics listed above, on its surface his testimony does meet the low threshold test of relevance. We address this additional testimony further in the context of necessity, below.

C. Mr. Dadoun's qualifications as an expert

[10] It is evident from Mr. Dadoun's affidavit that he has extensive, varied and senior experience in the area of mortgage lending. Because the respondents do not challenge his qualification as an expert, we need not describe that experience in detail here.

[11] We have no difficulty concluding that Mr. Dadoun is an expert about the risks associated with various kinds of mortgages, and about industry practices relating to underwriting mortgages.

D. Necessity of Mr. Dadoun's opinion evidence

[12] The portions of Mr. Dadoun's report that describe industry practices, or that compare respondents' policies and practices to those prevalent in the industry, engage matters that are outside the Commission's expertise. Those portions of the report enable us to analyze a number of issues in this proceeding. They therefore meet the necessity criterion.

[13] However, some questions that Staff posed to Mr. Dadoun lead him into areas that go beyond our need for expert assistance. One such question asks him whether investments in certain mortgages by the respondent Silverfern Secured Mortgage Fund (the **Silverfern Fund**) complied with constraints set out in

⁹ *R v Mohan*, [1994] 2 SCR 9, at paras 17, 26

¹⁰ Statement of Allegations, at para 38

governing documents. Another question asks whether certain investments were suitable for the fund.

- [14] To the limited extent that Mr. Dadoun's answers to those questions invoke industry practices, they are admissible opinion evidence. However, the questions (and therefore the answers) go farther, as is illustrated by the following two examples.
- [15] According to Mr. Dadoun, a document issued by the Silverfern Fund mentions the fund's focus on "the alternative market arising from Canada's tightening bank rules". Mr. Dadoun asserts that this is "a direct reference to OSFI Guideline B20" and that it is "completely misleading".¹¹ That may or may not be true, but if it is ultimately to be an issue in this proceeding, it will be for this panel to decide to what the statement intends to refer, and whether it is misleading. We need not rely on Mr. Dadoun's expertise to make that decision.
- [16] A second example is found in Mr. Dadoun's assertion that he "would have expected to see the use of funds by borrowers being mostly for either renovation of the subject property or debt consolidation, not to finance 'soft costs' and/or development/construction expenses."¹² It will be for this panel to assess, if called upon to do so, how the funds raised were used. We need not rely on Mr. Dadoun's expertise to make that assessment.
- [17] Staff, in its written submissions, concedes that some portions of Mr. Dadoun's report are not directly related to Staff's allegation of "substandard" practices. Staff submits that those portions are nonetheless of assistance to us, and we have the discretion to consider them. We decline the invitation. The question of whether opinion evidence is helpful arises only after the three criteria cited above, including necessity, have been established.¹³

E. Conclusions regarding Mr. Dadoun's opinion evidence

- [18] If Mr. Dadoun were giving oral testimony, specific questions being put to him could be ruled proper or improper. Mr. Dadoun's written testimony complicates matters somewhat, because some portions of the report weave together proper opinion evidence with evidence that does not meet the necessity test. It is not practical at this stage of the hearing to separate all of the strands. It will be for Staff to ensure that its closing submissions conform to the limitations described in these reasons. Any uncertainty can be resolved at that time, in the context of a full evidentiary record that includes cross-examinations and reply evidence, if any.
- [19] We make one other observation regarding Mr. Dadoun's report. In it, he refers to various documents on which he relied in coming to his conclusions. Those documents are not appended to his report, and at least one of them is not in evidence in this hearing. Because of the unusual way in which this hearing has had to proceed due to the COVID-19 pandemic, we wish to ensure that the parties have had a full opportunity to adduce, or review and respond to, as the case may be, any documents relied on in support of conclusions we will be asked to draw.

¹¹ *Dadoun Report* at 48

¹² *Dadoun Report* at 52

¹³ *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 24

[20] Accordingly, on or before May 29, 2020, Staff may serve and file such additional documents as it considers necessary in light of this observation. Alternatively, Staff may confirm to the Registrar and to the other parties that no additional documents are necessary.

III. CROSS-EXAMINATIONS

[21] As noted above, Mr. Laverty has advised that he intends to cross-examine Mr. Dusseldorp and Mr. Collat.

[22] Those cross-examinations may take place by videoconference. We ask that Staff:

- a. communicate with all respondents other than Mr. Laverty, in an attempt to determine which of them, if any, wishes to observe Mr. Laverty's cross-examination of Mr. Dusseldorp and Mr. Collat;
- b. work with the Registrar, Mr. Laverty, Mr. Dusseldorp, Mr. Collat, and any respondent who has advised Staff of an intention to observe a cross-examination, to ensure that there are no technological impediments to participation by the necessary parties and witnesses; and
- c. attempt to produce, and communicate to the Registrar, a set of possible dates and times for each of the two cross-examinations, taking into account the availability of Mr. Laverty, the relevant witness, and any respondent who has advised Staff of an intention to observe the cross-examination.

[23] If Staff is successful in the above steps, the Commission will review the submission and issue an order fixing dates and times for the cross-examinations. Alternatively, if Staff or any other party requires further direction from the Commission, they should submit that request to the Registrar, with a copy to all other parties.

Dated at Toronto this 19th day of May, 2020.

"Timothy Moseley"

Timothy Moseley

"Garnet W. Fenn"

Garnet W. Fenn

"Heather Zordel"

Heather Zordel