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Citation: Becksley Capital Inc. (Re), 2021 ONSEC 16
Date: 2021-06-21
File No. 2020-41

**IN THE MATTER OF
BECKSLEY CAPITAL INC. AND FABRIZIO LUCCHESI**

**REASONS FOR DECISION
(Rule 29 of the Ontario Securities Commission *Rules of Procedure and Forms*
(2019) 42 OSCB 9714)**

Hearing: May 21, 2021

Decision: June 21, 2021

Panel: M. Cecilia Williams Commissioner and Chair of the Panel

Appearances: Mark Skuce For Staff of the Commission
Fabrizio Lucchese For himself and Becksley Capital Inc.

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REASONS FOR DECISION

I. OVERVIEW

- [1] Becksley Capital Inc. (**Becksley**) and Fabrizio Lucchese (**Lucchese**) (Becksley and Lucchese together, **the Applicants**), the registered Ultimate Designated Person for Becksley, seek a hearing and review of a Director's decision (the **Application**) under Rule 14 of the Commission's *Rules of Procedure and Forms (Rules)*.¹ At an attendance on March 8, 2021 I ordered a schedule for the exchange of materials by the parties, a further attendance to be held on May 21, 2021 and set June 29, 2021 as the date for the hearing of the Application.
- [2] On May 20, 2021, Lucchese advised the Registrar that the Applicants were seeking an adjournment of the hearing of the Application for 90 days for the purpose of engaging in settlement discussions with the Commission (**Adjournment**). Staff consented to the request for an adjournment.
- [3] At the attendance on May 21, 2021 I heard oral submissions about the Adjournment. After considering the parties' submissions, I issued an order granting the Adjournment and vacating the remaining dates from the March 8, 2021 order, for reasons to follow. These are my reasons.

II. ANALYSIS

- [4] Rule 29(1) provides that every hearing of an application shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."
- [5] The issue I must decide is whether the circumstances underlying this request for an adjournment constitute exceptional circumstances justifying a delay of the hearing of the Application.
- [6] The Commission has ruled that the standard set out in Rule 29(1) is a "high bar"² that reflects the important objective set out in Rule 1, that Commission proceedings be conducted in a "just, expeditious and cost-effective manner". This objective must be balanced against parties' ability to participate meaningfully in the Application and to present their case.³
- [7] The balancing of these objectives is necessarily fact-based and includes consideration of the circumstances of the parties and the manner in which they have conducted themselves in the proceeding.⁴
- [8] The fact that parties have consented to an adjournment of a hearing does not relieve the panel from its obligation to determine whether there are "exceptional circumstances" warranting a delay in the proceeding.⁵
- [9] Staff submits that the Applicants' request for the Adjournment does raise "exceptional circumstances" because:

¹ (2019) 42 OSCB 9714

² *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28

³ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2020) 43 OSCB 35 (**Money Gate**) at para 54

⁴ *Money Gate* at para 54

⁵ *Kitmitto (Re)*, 2020 ONSEC 22, (2020) 43 OSCB 6723 (**Kitmitto**) at paras 17-22

- a. the delay is for the purpose of settlement discussions;
 - b. if successful, those discussions will entirely dispose of the proceeding;
 - c. the Applicants' registrations are currently suspended by virtue of the Director's decision that is the subject of the Application;
 - d. the Adjournment only serves to delay any relief that the Applicants may have obtained following the determination of the Application; and
 - e. the request for the Adjournment is timely as the hearing of the Application is still over a month away.
- [10] Staff also submits that the Commission has in the past granted adjournments to facilitate settlement discussions, including in the case of a review of a Director's decision.⁶ As Staff points out, each of these orders were issued prior to the introduction of Rule 29(1).
- [11] The Applicants requested the Adjournment well in advance of the date for the hearing of the Application and, therefore, have not disrupted any existing plans or caused the unnecessary consumption of resources.⁷
- [12] The Commission encourages settlement discussions, where appropriate, as they resolve matters promptly, efficiently and with certainty and avoid the expenditure of Commission resources associated with contested hearings. If the Applicants' settlement discussions are successful, the Application will not be necessary.
- [13] There is no immediate risk to investors from a delay of the Application, as the Applicants' registrations remain suspended by virtue of the Director's decision that is the subject of the Application .
- [14] Lastly, should the settlement discussions not succeed the Adjournment will have only directly affected the Applicants who, by seeking the Adjournment, have delayed any relief they may have obtained from the Application.
- [15] I conclude that, taken together, these factors are consistent with the objective of conducting proceedings in a just, expeditious and cost-effective manner and amount to exceptional circumstances under Rule 29(1) warranting the Adjournment.

III. CONCLUSION

- [16] For the reasons above, on May 21, 2021 I ordered that:
- a. the Adjournment is granted;
 - b. the following dates are vacated:
 - i. the date for the hearing of the Application scheduled for June 29, 2021; and
 - ii. the date for Staff and the Applicants to file and serve their hearing brief and written submissions; and

⁶ *Wealth Stewards Portfolio Management Inc. (Re)*, (2014) 37 OSCB 9940; *Illidge (Re)*, (2008) 31 OSCB 5218; *Ciccone (Re)*, (2012) 35 OSCB 8412

⁷ *Kitmitto* at para 27

- c. a further attendance in this proceeding is scheduled for August 19, 2021 at 11:00 am by teleconference, or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

Dated at Toronto this 21st day of June, 2021.

"M. Cecilia Williams"

M. Cecilia Williams