

IN THE MATTER OF
BUCKINGHAM SECURITIES CORPORATION AND
MILLER BERNSTEIN & PARTNERS LLP

CONFIDENTIAL APPLICATION OF MILLER BERNSTEIN LLP

(Application under rule 17 of the Capital Markets Tribunal Rules of Procedure and Forms
for an order providing relief from the application of the common law implied undertaking)

NOTICE OF APPLICATION

A. ORDER SOUGHT

The applicant, Miller Bernstein LLP (“Miller Bernstein”), requests that the Tribunal make:

1. An order providing relief from the common law implied undertaking rule in respect of certain portions of transcripts of the voluntary interview of Harold Seidel (“Seidel”) conducted by Staff of the Ontario Securities Commission (the “OSC” or the “Commission”) on July 18 and August 24, 2002 (the “Seidel Interview”), as attached at Appendix “A” to this notice of application.
2. An order providing relief from the common law implied undertaking rule in respect of the November 2, 2000 letter from Lions Gate Management Ltd. (the “Lions Gate Letter”) voluntarily provided by Seidel to Staff of the OSC, as attached at Appendix “B” to this notice of application.
3. An order that the foregoing relief from the common law implied undertaking rule is for the limited purpose of permitting Miller Bernstein to respond to the motion of CSTC Inc. (“CSTC”) for an order assigning to CSTC the claims of Buckingham Securities Corporation (“Buckingham”), as advanced by BDO Canada Limited (the “BDO”) in its capacity as court-appointed receiver-manager of Buckingham, in the Ontario Superior Court of Justice proceeding bearing Court File No. 03-CV-260914CM3 (the “Receiver’s Action”), and for no other purpose.
4. An order that the within application and any documents filed in relation thereto be confidential.

B. GROUNDS

The grounds for the request are:

5. Miller Bernstein is a limited liability partnership of chartered professional accountants based in Toronto, Ontario. It provides audit and assurance, tax, consulting and advisory, and family financial planning services.

6. A predecessor entity to Miller Bernstein, Miller Bernstein & Partners, was engaged by Buckingham to provide services for Buckingham's fiscal year ended March 31, 1998. Another predecessor entity, Miller Bernstein & Partners LLP, performed services for Buckingham for its 1999 and 2000 fiscal years. Both predecessor partnerships were subsequently wound up.
7. Buckingham was a broker dealer that was registered with the OSC. On July 26, 2001, the OSC obtained an order from the Ontario Superior Court of Justice appointing BDO Dunwoody as the Receiver of Buckingham.
8. Staff of the OSC subsequently brought enforcement proceedings against Buckingham, certain former directors and officers of Buckingham, and against Miller Bernstein & Partners LLP, which reached a settlement agreement that was approved by the OSC.
9. As part of the enforcement proceeding, Miller Bernstein & Partners LLP received disclosure from Staff. The disclosure included transcripts of a voluntary interview with a former senior employee of Buckingham, Seidel (*i.e.*, the Seidel Interview) and a November 2, 2000 letter from Lions Gate Management Ltd. that was voluntarily provided by Seidel to Staff of the OSC in connection with the Seidel Interview (*i.e.*, the Lions Gate Letter).
10. BDO has brought an application in the Ontario Superior Court of Justice to be discharged as receiver of Buckingham.
11. In response to BDO's application, CSTC, a corporation owned and controlled by a former Buckingham customer, Gerry Feldman ("Feldman"), seeks an assignment of the Receiver's Action, which advances Buckingham's civil litigation claims against Miller Bernstein.
12. Evidence given by Seidel in the voluntary Seidel Interview, including the Lions Gate Letter, implicates Feldman in misconduct that may have contributed to the collapse of Buckingham. It also indicates that Feldman, hiding behind corporations where ownership was not transparent, was substantially indebted to Buckingham, and that these debt obligations were not met.
13. If Seidel's voluntary evidence is true, it calls into question Feldman's suitability, through CSTC, to take an assignment of Buckingham's claims against Miller Bernstein advanced in the Receiver's Action.
14. It is appropriate that information about Feldman's suitability be available to the judge who will determine whether Buckingham's claims against Miller Bernstein can be appropriately assigned to CSTC.
15. Since Seidel's interview and provision of documents to Staff was voluntary, Miller Bernstein does not need nor seek relief under s. 17 of the *Securities Act* (Ontario). Miller Bernstein requires relief only from the common law implied undertaking rule.

16. The OSC has jurisdiction grant relief from the common law implied undertaking rule. This jurisdiction is necessary and consistent with the OSC having the implicit powers to fulfill its own mandate, control its own process, and guard against unwarranted disclosure. No other adjudicative body or court has such jurisdiction.
17. Upon receiving a draft of this application, Seidel confirmed in writing that he does not object to the relief sought by Miller Bernstein.
18. The relief from the implied undertaking sought by Miller Bernstein is appropriate in the unique circumstances of this case. There is a significant public interest in the Ontario court having before it all evidence relevant to the issue of Feldman's suitability to obtain an assignment of Buckingham's civil litigation claims against Miller Bernstein.
19. Miller Bernstein reasonably has credible concerns regarding Feldman's suitability to obtain an assignment of Buckingham's claims against Miller Bernstein that cannot be fully or adequately advanced before the Ontario court without the relief from the implied undertaking rule sought on this application.
20. It would be a significant injustice if the Ontario court was precluded from considering relevant information regarding whether Feldman is suitable to obtain an assignment of Buckingham's claims against Miller Bernstein.
21. In contrast, there would be little if any injustice or even consequence flowing from the OSC granting the relief from the implied undertaking rule sought by Miller Bernstein, including because Seidel has confirmed that he does not object to the relief sought.
22. Granting the relief from the implied undertaking rule as sought by Miller Bernstein is unlikely to create any meaningful precedent or compromise or undermine Staff of the OSC's positions or approaches in respect of other investigations or proceedings. Rather, the relief sought is justified by the unique circumstances of this case that are unlikely to arise in other cases.

C. EVIDENCE

The applicant intends to rely on the following evidence at the hearing:

23. The affidavit of Alexander Payne, sworn January 24, 2023;
24. Such further or other evidence as counsel may advise and the Tribunal may permit.

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