



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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Citation: *Bridging Finance Inc (Re)*, 2023 ONCMT 16

Date: 2023-05-08

File No. 2022-9

**IN THE MATTER OF
BRIDGING FINANCE INC., DAVID SHARPE, NATASHA SHARPE and
ANDREW MUSHORE**

REASONS FOR DECISION

(Rule 29 of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators: Russell Juriansz (chair of the panel)
Timothy Moseley
Sandra Blake

Hearing: By videoconference, May 5, 2023

Appearances: Melissa MacKewn For David Sharpe
Dan Thomas

Lawrence Thacker For Natasha Sharpe
Jonathan Chen

Johanna Braden For Staff of the Ontario Securities
Mark Bailey Commission
Adam Gotfried

Erin Pleet For the receiver of Bridging Finance Inc.

No one appearing for Andrew Mushore

REASONS FOR DECISION

- [1] These are the reasons why David and Natasha Sharpe’s motion for adjournment was dismissed orally at the close of argument on May 5, 2023. The Sharpes sought to adjourn: (i) their motions for a stay of proceedings; (ii) the merits hearing; and (iii) related filing dates until their judicial review application of the Tribunal’s February 21, 2023 decision¹ is determined by the Divisional Court. We are not satisfied that the Sharpes’ judicial review application is an “exceptional circumstance” that requires granting the adjournments.
- [2] Rule 29(1) of the Tribunal’s *Rules of Procedure and Forms* states that every motion and every merits hearing “shall proceed on the scheduled date unless a Party satisfies the Panel that there are exceptional circumstances requiring an adjournment.” The rule embodies the evident public interest that proceedings under the *Securities Act*² proceed in a just manner expeditiously and are concluded without unwarranted delay.
- [3] The Sharpes advised the OSC Staff’s motion to quash their judicial review was scheduled for May 15, 2023, and the application may be heard in early July. Nevertheless, we regard the motion as seeking an indefinite adjournment. The Sharpes, naturally, could not advise when the Divisional Court application would be determined. However, they did not address whether they would appeal an order quashing or dismissing their application, further delaying the proceedings.
- [4] Much of the Sharpes’ submissions were based on the premise that the Tribunal’s February 21, 2023, decision was incorrect. Counsel for the Sharpes reviewed what they consider to be the “numerous significant reviewable legal errors” in that decision which they have raised in their judicial review application.
- [5] It is not for this Tribunal to assess the strength of the Sharpes’ arguments in the Divisional Court or speculate about the outcome of their judicial review application. Nor is it our role to preside over relitigating matters we have already decided. We cannot entertain the premise our February 21, 2023, decision was

¹ *Bridging Finance Inc (Re)*, 2023 ONCMT 8

² RSO 1990, c S.5

incorrect and, therefore, must reject the submission that that decision deprived the Sharpes of evidence necessary for them to advance their motions for a stay of proceedings. We must reject the submission that proceeding with the stay motions as scheduled will deny them the right to make full answer and defence.

- [6] Should the Divisional Court set aside the Tribunal's decision, the Tribunal can rehear the matter in accordance with any directions given by the Court. This is not a case, such as *Cheng*,³ on which the Sharpes relied. In *Cheng*, the respondent claimed certain evidence was protected by solicitor-client privilege. Had Cheng's judicial review application been successful, it would not have been possible to rehear the matter. The matter could not be reheard because the disputed evidence would have already been admitted at the merits hearing. There is no similar circumstance in this case.
- [7] We do recognize that in this case, a rehearing of the disclosure motion and/or stay motions, should it become necessary, would result in additional expense to the parties and fragmentation of proceedings. Such negative factors are possible whenever a party seeks to judicially review an interlocutory decision of an administrative tribunal. If such possible outcomes were determinative, every judicial review application of an interlocutory decision would be an "exceptional circumstance" requiring an adjournment. The mere filing of a judicial review application, without more, does not satisfy the standard stipulated in Rule 29. The unique circumstances of each case must be considered.
- [8] This proceeding is already fragmented - the 35-day merits hearing is scheduled intermittently over a period of nine months. We also consider that this matter has proceeded slowly. It began with the filing of the statement of allegations on March 31, 2022. The merits hearing is not scheduled to begin until June 2023 and is not expected to be completed until February 2024.
- [9] We were not persuaded that the possibility of additional costs outweighed the need to proceed expeditiously. As noted, neither the Sharpes nor we can be confident about when this proceeding could resume if an adjournment were

³ *Cheng (Re)*, 2018 ONSEC 13

granted. Thus far, finding dates when the several counsel on this case are all available has been difficult.

- [10] The Sharpes submit the merits hearing should be adjourned because, if their judicial review application is successful, the stay motions will not be determined before the merits hearing commences, as the Tribunal decided was appropriate in its December 6, 2022 decision.⁴ As noted, we must proceed with our statutory task without speculating about what the Divisional Court may decide. That said, the Tribunal's decision that the stay motions be heard first was not based on what was legally required but on what was most expedient.
- [11] We accord little weight to the Sharpes' argument, advanced only in their written submissions, that another reason to grant the adjournment was to allow them to be represented by counsel of their choice. The Tribunal already dealt with this concern. The Tribunal, in its December 6, 2022 decision, determined that the timely progress of the case required that dates be set when not all counsel were available.⁵ The Tribunal had been advised repeatedly of the different roles of the two law firms retained by David Sharpe.
- [12] We did not grasp the relevance of the recent decision of the Supreme Court of Canada, *R. v. Haevischer*,⁶ upon which the Sharpes placed strong reliance. They submitted that *Haevischer* applies to regulatory proceedings and has changed the screening threshold for applications for a stay of proceedings based on allegations of abuse of process. Whether *Haevischer* has any implications for the Tribunal's February 21, 2023, decision is a matter for the Divisional Court hearing the Sharpes' judicial review. If the Sharpes regard *Haevischer* as pertinent to their stay motions before this Tribunal, they may advance that argument when the stay motions are heard. (We note that the stay motions are not being dealt with summarily.)

⁴ *Bridging Finance Inc (Re)*, 2022 ONCMT 37 at paras 23-29

⁵ *Bridging Finance Inc (Re)*, 2022 ONCMT 37 at paras 42 and 43

⁶ 2023 SCC 11

[13] For these reasons the Sharpes' motion for adjournment was dismissed.

Dated at Toronto this 8th day of May, 2023

"Russell Juriansz"

Russell Juriansz

"Timothy Moseley"

Timothy Moseley

"Sandra Blake"

Sandra Blake