



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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Citation: *Bridging Finance Inc (Re)*, 2023 ONCMT 17

Date: 2023-05-09

File No. 2022-9

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

REASONS FOR DECISION

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

Hearing: By videoconference, April 14, 2023

Appearances: Johanna Braden For Staff of the Ontario Securities
Mark Bailey Commission
Adam Gotfried
Nicole Fung
Erin Pleet For the receiver of Bridging Finance Inc.
Melissa MacKewn For David Sharpe
Brian Greenspan
Alexandra Grishanova
Lawrence E. Thacker For Natasha Sharpe
Jonathan Chen
Jonathan Wansbrough For Andrew Mushore

REASONS FOR DECISION

1. OVERVIEW

- [1] On April 14, 2023, the parties to this enforcement proceeding attended a hearing to address scheduling two motions brought by Staff, in which Staff seeks:
- a. from David Sharpe and Natasha Sharpe (the **Sharpes**), further summaries of witnesses' anticipated evidence; and
 - b. dismissal of the Sharpes' motions to stay this proceeding against them.
- [2] Following the hearing, we issued an order, for reasons to follow, providing that:
- a. Staff's motion for further witness summaries from the Sharpes will be heard orally on May 23 and 26, 2023, with a schedule set for the exchange of materials in advance of that hearing;
 - b. Staff's motion to dismiss the Sharpes' stay motions shall be treated as having been withdrawn; and
 - c. the Sharpes' motions to stay this proceeding against them will proceed on May 23 as previously scheduled and, if required, on May 26, with a schedule set for the exchange of materials before that hearing.
- [3] In making that order, we:
- a. accepted Staff's submission that the Sharpes' application for judicial review of an earlier decision in this proceeding ought not to delay the progress of this proceeding, including Staff's motion for further witness summaries;
 - b. accepted the individual respondents' submissions that the motion for further witness summaries should be heard orally rather than in writing; and
 - c. accepted Staff's submission that any efficiencies that would be achieved by hearing Staff's motion to dismiss the Sharpes' stay motions are dwindling because the date for the hearing of the stay motions is approaching.

2. BACKGROUND

- [4] On April 30, 2021, the Ontario Securities Commission ordered¹ that trading cease in securities of nine entities related to Bridging Finance Inc., a respondent in this proceeding. That same day, the Commission obtained an order from the Superior Court of Justice, appointing a receiver over the various Bridging entities. Staff's court application record included material that Staff obtained during its investigation using powers of compulsion pursuant to an order issued under s. 11 of the *Securities Act*.²
- [5] This Tribunal has, several times, extended the cease trade portion of the Commission's April 30 order. In support of Staff's first request to extend the order in May 2021, Staff filed an extensive record that included the compelled material referred to above.
- [6] Staff filed a Statement of Allegations on March 31, 2022 to commence this proceeding.
- [7] The Sharpes have moved to stay this proceeding asserting abuse of process. The Sharpes point to the Tribunal's finding³ that the Commission ought to have obtained an order from the Tribunal under s. 17 of the *Securities Act* before the Commission included the compelled material in its application record in court. They also note that six of the witnesses on Staff's witness list for the merits hearing in this proceeding were interviewed by Staff after the date on which the compelled material was published. The stay motions are scheduled to be heard on May 23 and 26, 2023.⁴
- [8] The Sharpes previously moved for an order requiring Staff to make further disclosure that they argued would be relevant to the stay motions. The Tribunal dismissed that motion.⁵ The Sharpes applied to Divisional Court for judicial review of that decision.

¹ *Bridging Finance Inc (Re)*, (2021) 44 OSCB 3781

² RSO 1990, c S.5

³ *Sharpe (Re)*, 2022 ONSEC 3 at para 5

⁴ (2022), 45 OSCB 10059

⁵ *Bridging Finance Inc (Re)*, 2023 ONCMT 8

[9] Staff moved in the Divisional Court to quash the judicial review application. That motion has been scheduled for May 15, 2023.

[10] On April 14, 2023, we heard submissions from the parties about scheduling Staff's two motions (for further witness summaries and to dismiss the Sharpes' stay motions) in view of the Sharpes' pending judicial review application.

3. ISSUES

3.1 Introduction

[11] In scheduling Staff's two motions, we considered the following issues:

- a. should we schedule Staff's motion seeking further witness summaries, and if so, should the motion be in writing?
- b. should we schedule Staff's motion to dismiss the stay motions?
- c. should we schedule dates for the exchange of materials for the stay motions?

3.2 Motion seeking further witness summaries

[12] Staff submits that the Sharpes' application for judicial review should not affect the scheduling of any steps in this Tribunal proceeding. Staff further submits that its motion for further witness summaries would be heard most efficiently in writing.

[13] The Sharpes submit that the motion should not be heard until after the Divisional Court decides their application for judicial review. The Sharpes submit they do not have unlimited resources, they are still seeking dates for the exchange of materials for the judicial review, time is scarce, and delivering written submissions regarding the motion would be onerous.

[14] We agree with Staff that the pending judicial review application should not affect the scheduling of the motion. The Divisional Court has clearly articulated the undesirability of fragmenting tribunal proceedings.⁶ Absent a compelling reason to do otherwise, this Tribunal must adhere to its mandate to ensure that

⁶ *Ontario College of Art v Ontario (Human Rights Commission)*, 1993 CanLII 3430 (ON SCDC) at para 6

proceedings before it proceed efficiently and expeditiously, while in a manner consistent with principles of fairness.⁷

3.3 Staff's motion to dismiss the Sharpes' stay motion

[15] Staff submits that considering the Tribunal dismissed the Sharpes' stay motions because the Sharpes had not demonstrated a tenable case for a stay, proceeding to a full hearing of their stay motions would not be the best use of resources. Staff submits that it would be more efficient for the Tribunal to hear a motion to dismiss the Sharpes' stay motions on preliminary grounds and in writing. However, given the fast-approaching scheduled date for the stay motions hearing (May 23), Staff concedes that the efficiencies with this approach are dwindling.

[16] Based on these submissions, we decided to treat the motion to dismiss the stay motions as having been withdrawn by Staff and included a term in our order to that effect.

3.4 Exchange of materials for the stay motions

[17] Staff submits that the Sharpes' application for judicial review ought not delay the progress of this proceeding and that the timetable for the exchange of materials for the stay motions should be set as usual. Further, Staff stated they would oppose any motion the Sharpes have brought to adjourn the stay motions scheduled for May 23⁸.

[18] The Sharpes submit that Staff's motion to quash the judicial review application, now scheduled for May 15, has changed the circumstances. which is the nature of litigation. We ought to put everything on hold because if the judicial review application is successful, then the stay motion will have to be re-argued. They further submit that they intend to summons witnesses for the hearing of the stay motion as it is their position that the record is not yet complete as the Tribunal declined to grant their motion for disclosure.

⁷ *Capital Markets Tribunal Rules of Procedure and Forms*, r 1

⁸ Following our decision, but before the release of these reasons, the Sharpes brought such a motion. That motion plays no part in our reasons.

[19] Consistent with our view above that the proceeding should not be fragmented but rather should proceed expeditiously, we accept Staff's submissions. Further, we cannot give effect to the Sharpes' submissions that things should be delayed to accommodate the schedule of one of Mr. Sharpe's several lawyers. A respondent's choice of counsel must be from among those who are ready and able to appear on the respondent's behalf within a reasonable time.⁹ This proceeding has already been scheduled and delayed to accommodate respondents' counsel. The dates for the merits hearing have been set for a long time.

[20] To provide Staff and the respondents with as much time as possible to prepare materials for the stay motions, we decided that the materials related to witness summaries should be provided as expeditiously as possible. We included terms to that effect in our order.

[21] We further ordered that the exchange of materials for the stay motions be scheduled as close to the stay motion date as possible and included dates to that effect in our order.

4. CONCLUSION

[22] For the above reasons, our order of April 14, 2023, provided that:

- a. the motion seeking further witness summaries will be heard on May 23 and 26, 2023, with the schedule for the exchange of materials as set out in paragraph 2 of the order;
- b. the motion to dismiss the stay motions shall be treated as having been withdrawn; and

⁹ *Hollinger Inc (Re)*, 2006 ONSEC 2 at para 24

- c. the schedule for the exchange of material for the say motions will be as set out in paragraph 5 of the order.

Dated at Toronto this 9th day of May, 2023

"Sandra Blake"

Sandra Blake

"Timothy Moseley"

Timothy Moseley