



Capital  
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Tribunal

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financiers

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Citation: *Bridging Finance Inc (Re)*, 2023 ONCMT 19

Date: 2023-05-16

File No. 2022-09

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

**REASONS FOR DECISION**

**(Subsection 12(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22  
and Rule 26(1) of the *Capital Markets Tribunal Rules of Procedure and Forms*)**

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

**Hearing:** In writing; final written submissions received May 10, 2023

**Appearances:** Brian H. Greenspan                      For David Sharpe  
Naomi M. Lutes  
Alistair Crawley  
Melissa MacKewn  
Daniel Thomas  
Alexandra Grishanova  
  
Lawrence E. Thacker                      For Natasha Sharpe  
Jonathan Chen  
Mari Galloway  
  
Mark Bailey                                      For Staff of the Ontario Securities  
Johanna Braden                              Commission

## REASONS FOR DECISION

### 1. OVERVIEW

- [1] The respondents David Sharpe and Natasha Sharpe moved to stay this enforcement proceeding. The motions arise from the Ontario Securities Commission's decision not to seek an order under s. 17 of the *Securities Act* (the **Act**)<sup>1</sup> before including certain compelled evidence in the OSC's 2021 application to the Superior Court of Ontario for the appointment of a receiver over Bridging entities.
- [2] The Sharpes ask this Tribunal to issue summonses to five members of Staff of the OSC, compelling their attendance at the hearing of the stay motions. The Sharpes submit that the intended witnesses may have relevant evidence to give about how the OSC proceeded with the receivership application. We treat the Sharpes' request for summonses as a motion to be heard in writing.
- [3] On May 15, 2023, we dismissed the request, for reasons to follow.<sup>2</sup> In these reasons for that decision, we explain that in substance, the request is an impermissible attempt to re-litigate issues that we decided in dismissing the Sharpes' earlier request for documentary disclosure in aid of the stay motions.<sup>3</sup>

### 2. ANALYSIS

- [4] The Sharpes request summonses under s. 12(1) of the *Statutory Powers Procedure Act*<sup>4</sup> and rule 26(1) of the *Capital Markets Tribunal Rules of Procedure*. Those provisions say that this Tribunal "may" require the attendance of a person at a hearing.
- [5] The Sharpes submit that they are entitled to a full evidentiary record for their stay motions. They want to elicit evidence about what the internal process was behind the OSC's decision to pursue the receivership application without a s. 17 order. They seek evidence about, among other things: (i) the OSC's analysis of

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<sup>1</sup> RSO 1990, c S.5

<sup>2</sup> *Bridging Finance Inc (Re)*, Order dated May 15, 2023

<sup>3</sup> *Bridging Finance Inc (Re)*, 2023 ONCMT 8 (**Documentary Disclosure Decision**)

<sup>4</sup> RSO 1990, c S.22

that question, (ii) the preparation of some of the materials in the court application, (iii) the OSC's communications with the media and the receiver, (iv) any consideration by the OSC of the Sharpes' interests with respect to publication of the compelled testimony, and (v) the OSC's communications with law enforcement about ongoing or potential criminal investigations.

[6] The Sharpes ask that we issue summonses to the OSC's Chief Executive Officer, its Director of Enforcement, two Senior Litigation Counsel, and one Senior Forensic Accountant. The Sharpes submit that to the best of their knowledge, those five individuals were central to the decision to include compelled evidence in the receivership application.

[7] In their earlier motion for documentary disclosure, the Sharpes sought various documents that might exist and that the Sharpes hoped would support their stay motions. The scope of their request closely resembled the above list of topics.<sup>5</sup> In dismissing that earlier motion, we found that the Sharpes had failed to establish a tenable case for their stay motions. Specifically:

- a. the publication the Sharpes complained of was in a different proceeding (the receivership proceeding in court), and had it occurred in this proceeding, it would have been permitted by s. 17(6) of the *Act*;<sup>6</sup>
- b. the Sharpes failed to persuade us how the OSC's wrongful act in the receivership proceeding might have an effect on this proceeding;<sup>7</sup>
- c. the Sharpes failed to demonstrate a reasonable possibility that the continuation of this proceeding would violate the fundamental principles of justice;<sup>8</sup> and
- d. the Sharpes conceded that there was no evidence of bad faith on the part of OSC Staff.<sup>9</sup>

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<sup>5</sup> *Documentary Disclosure Decision* at para 8

<sup>6</sup> *Documentary Disclosure Decision* at para 22

<sup>7</sup> *Documentary Disclosure Decision* at paras 27-38

<sup>8</sup> *Documentary Disclosure Decision* at para 25

<sup>9</sup> *Documentary Disclosure Decision* at para 32

- [8] The only indications that exist in the record about what underlay the OSC's decision to proceed without a s. 17 order run counter to the Sharpes' assertion that the decision may have improperly targeted David Sharpe. Those indications are:
- a. in the evidentiary record, an email from Staff litigation counsel at the time of the initial request for a temporary order, in which email the Staff counsel advised of the OSC's position that no s. 17 order was required in connection with the receivership application; and
  - b. Staff's unchallenged submission, made in a previous hearing and acknowledged in an earlier decision of this Tribunal, that the OSC had on other unrelated occasions publicly disclosed compelled evidence in connection with a receivership application, without a s. 17 order.<sup>10</sup>
- [9] Despite that background, the Sharpes urge us to see this request for summonses as being very different from their earlier request for documents. They correctly point out that the two requests are based on different statutory provisions and rules. However, the differences are not meaningful.
- [10] In substance the two requests are congruent, as foreshadowed by counsel for David Sharpe at an April 14, 2023, attendance in this proceeding: "Having been refused the documents, we still have the opportunity to seek to summons the individuals. We just will be less pointed in our efforts because we don't have the documents."<sup>11</sup>
- [11] The congruence is also exemplified by how the Sharpes described the purpose of their request for summonses: "...so that evidence that informs the issues engaged by the Stay Motion is tendered at the hearing by the Relevant Witnesses",<sup>12</sup> and how they described the purpose of their earlier request for documents: "all of the requested materials are relevant... to the stay motion being brought by Mr. Sharpe."<sup>13</sup>

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<sup>10</sup> *Sharpe (Re)*, 2022 ONSEC 3 at para 114

<sup>11</sup> Hearing transcript, April 14, 2023 at p 19 lines 14-16

<sup>12</sup> Written submissions of David and Natasha Sharpe, April 21, 2023 at para 29

<sup>13</sup> Written submissions of David Sharpe, January 6, 2023 at para 42

- [12] The Sharpes have not persuaded us that we ought to apply a different standard to this request as we did to the earlier request that we dismissed. In both instances, the Sharpes ask us to compel the delivery of evidence, whether that evidence is oral or documentary. We see no reason in principle to take a different approach.
- [13] The Sharpes also correctly submit that the applicable standard is a low bar. But there is a bar, and that bar requires us to assess whether we have any basis in the record to think that the requested summonses are more than a fishing expedition. The Sharpes have identified nothing to suggest that the summonses would lead to relevant evidence that might indicate abusive conduct on the part of Staff. It is not sufficient to speculate that such evidence might exist.
- [14] Our conclusions on this motion are unaffected by the recent Supreme Court of Canada decision in *R v Haevischer*,<sup>14</sup> about which Staff provided further submissions. The Sharpes did not provide submissions in response. In our view, *Haevischer* does not relate to the issues on this motion. That decision relates to the screening threshold for applications for a stay of proceedings based on allegations of abuse of process. Our decision on this motion is confined to whether we should issue summonses in aid of a motion.
- [15] There is no reasonable basis for the Sharpes' request. We decline to exercise our discretion to issue any of the requested summonses.

Dated at Toronto this 16th day of May, 2023

*"Russell Juriansz"*

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Russell Juriansz

*"Timothy Moseley"*

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Timothy Moseley

*"Sandra Blake"*

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Sandra Blake

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<sup>14</sup> 2023 SCC 11