

**IN THE MATTER OF
ACASTA ENTERPRISES INC.**

APPLICATION

(For Hearing and Review of a Decision Under
Sections 8, 21.7 and 127 of the *Securities Act*, R.S.O. 1990, c S.5)

A. ORDER SOUGHT

The Applicant, Anson Advisors Inc. (“Anson”), applies to the Ontario Securities Commission (the “Commission”) for the following orders:

1. An order pursuant to sections 21.7 and 8 of the *Securities Act*, R.S.O. 1990, c S.5 (the “Act”) (i) reversing the decision of the Toronto Stock Exchange (the “TSX”) made on or about February 20, 2018 (the “TSX Decision”), and (ii) requiring the Respondent, Acasta Enterprises Inc. (“Acasta”, or the “Company”) to obtain approval from a majority of the disinterested holders of the Class B shares (the “Shares”) of Acasta (the “Minority Shareholders”) prior to closing a debt to equity conversion transaction between the Company and WFI Inc. (the “Related Party Transaction”).
2. An order staying the TSX Decision pursuant to sections 21.7(2) and 8(4) of the Act until such time as the Commission determines the issues raised in this Application.
3. An order pursuant to section 127(1) cease trading the Shares issued pursuant to the Related Party Transaction until such time as it has been approved by Minority Shareholders of Acasta.
4. Such further and other relief as counsel may advise.

B. GROUNDS

The grounds for the request and the reasons for seeking a hearing and review are:

The Parties

1. The Applicant, Anson, is the manager or co-manager of funds that have ownership or control over 12,241,480 Shares of Acasta, representing approximately 18.8% of the outstanding Shares.

2. The Respondent, Acasta, is incorporated pursuant to the *Business Corporations Act* (Ontario) R.S.O. 1990, c.B.16. The Shares of Acasta trade on the TSX. Originally formed as a special purpose acquisition company, as of December 2018, the Company's only investment was its interest in Apollo Health and Beauty Care Inc. ("Apollo").
3. The Wachsbergs founded Apollo, sold it to Acasta, and are officers and directors. As at December 21, 2018, Richard and Charles Wachsberg became the co-CEOs of Acasta and directors. The Wachsbergs also control WFI Inc. ("WFI"), the counterparty to Acasta in the Related Party Transaction. Prior to giving effect to the Related Party Transaction, the Wachsbergs beneficially own approximately 36% of the outstanding Shares. If it closes, the Related Party Transaction will result in the Wachsbergs materially increasing their ownership to 41.8% of the outstanding Shares.

Background to the Related Party Transaction

4. On December 21, 2018, the independent directors of Acasta elected by shareholders were unilaterally replaced by the Wachsbergs, who also at that time became Acasta's Co-CEOs. This extraordinary step was taken after the Wachsbergs disagreed with the independent directors with respect to a value-enhancing transaction involving Apollo, a transaction favoured by the independent directors. That transaction, if it had proceeded, would have generated sufficient proceeds to repay all of Acasta's debt in full and provide Acasta Shareholders with at least \$1.48 per Share in value.
5. As a result of the disagreement with the Wachsbergs, and after having been threatened with litigation, the elected independent directors of Acasta resigned, and the Wachsbergs installed their appointees.
6. These developments caused concern to Anson, which began to consider its options to address the serious problems in the governance of Acasta.
7. On December 24, 2018, Anson's former counsel wrote to the TSX raising a concern about the possibility of Acasta completing a transaction like the Related Party Transaction. In that letter, Anson alerted the TSX to Anson's concerns about the risk that the Company, under the direction of the Wachsbergs, would seek to fabricate financial urgency and to undertake a dilutive transaction to entrench and benefit themselves. Anson's concerns in this regard were heightened when counsel to the Wachsbergs informed Anson that the Wachsbergs intended, after securing control of Acasta's board, to cause the Company to pursue a dilutive transaction and that Minority Shareholders could do nothing to stop it.

8. On January 17, 2019, counsel to Acasta demanded that Anson rescind its December 24, 2018 letter to the TSX, enter into a standstill agreement, and provide the Wachsbergs with a right of first offer with respect to Anson's Shares, in exchange for Acasta not reporting baseless allegations of securities law breaches to the Commission. Anson refused to accede to this demand. The demands made by Acasta solely benefitted the Wachsbergs, through obtaining additional control and commercial concessions from Anson, and provided no benefit to Acasta or its Minority Shareholders.
9. Anson then began considering its right to requisition a meeting of Shareholders to replace the Wachsbergs and their appointees on the board. While it had not yet made any decision about requisitioning a Shareholders meeting, on January 25, 2019, Anson demanded an Acasta Shareholder list and a list of non-objecting beneficial Shareholders. That request was rejected on the basis of minor technical deficiencies, and on February 7, 2019, a second request was submitted. On February 8, 2019, the following day, Acasta announced the Related Party Transaction.

The Related-Party Transaction

10. According to Acasta's February 8, 2019 press release, pursuant to the Related Party Transaction, WFI was proposing to convert \$4,783,578 of indebtedness into 6,499,426 Shares at a price of \$0.736 per share. The closing price of the Shares on the TSX on February 7, 2019 was \$0.91.
11. There are very serious problems with the Related Party Transaction:
 - (a) It is between related parties and would be at price that is 20% below the market price of the Shares on the date of announcement, and nearly 50% below fair value of the Shares imputed by the value-enhancing transaction referred to above. The intent and effect of the Related Party Transaction is to transfer value and control from the Company and its Minority Shareholders to the Wachsbergs.
 - (b) The proposed transaction is occurring after the Company, at the instigation of the Wachsbergs, terminated consideration of strategic alternatives for Apollo.
 - (c) While Acasta's February 8, 2019 news release asserts that the Related Party Transaction accords with the Company's plan to urgently reduce its outstanding indebtedness, the Related Party Transaction in fact deals with only approximately \$4.7 million of the Company's \$73 million of total indebtedness, of which approximately \$62 million is owed to a bank and the balance is owed to the Wachsbergs.

- (d) Anson previously expressed its willingness to provide financing to Acasta but has not been contacted by the Company's board of directors since it was reconstituted. Other Shareholders may also be inclined to provide financing to Acasta, and third-party financing may also be available to Acasta on terms that would be more favourable to the Company than those negotiated with the Wachsbergs.
 - (e) Acasta's February 8, 2019 news release provides insufficient disclosure to justify the basis on which Acasta's board determined that the Related Party Transaction is in the best interests of Acasta having regard to available alternatives and the conflicted nature of the transaction. There is no evidence that the directors of Acasta received any financial advice or a fairness opinion prior to approving the Related Party Transaction. Acasta's subsequently filed Material Change Report does nothing to address the deficiencies in its February 8, 2019 press release.
 - (f) The Related Party Transaction will materially affect control of Acasta. It will increase the Wachsbergs' holdings from 36% to 41.8%, giving them effective control in light of historical turnout at Shareholder meetings. This is the motivation behind the Related Party Transaction, which was announced immediately after Anson requested Shareholder lists.
 - (g) At the same time that Acasta announced the Related Party Transaction, it also announced that an advanced notice by-law had been adopted by the Company. Taken together, these defensive measures were intended to frustrate Shareholders interested in replacing the directors installed by the Wachsbergs.
 - (h) All of the independent directors elected by Shareholders were replaced by the Wachsbergs and individuals appointed by them on December 21, 2018 without any prior consultation with Shareholders, and without any disclosure being provided to Shareholders about the qualifications and experience of those individuals and, in the case of individuals other than the Wachsbergs, their independence or connections to the Wachsbergs.
12. The Related Party Transaction does little to improve Acasta's financial position, and is tactically designed to increase the Wachsberg's control over Acasta in the face of potential opposition from Minority Shareholders.

13. Anson wrote to the TSX on February 11, 2019 and asked that it exercise its discretion under section 603 of the Company Manual and require that Acasta obtain Minority Shareholder approval of the Related Party Transaction.
14. On February 12, 2019 Anson issued a press release disclosing its request to the TSX. In response, counsel to Acasta threatened a regulatory complaint and disclosure making baseless allegations regarding securities law breaches unless Anson withdrew its request to the TSX. Anson refused to accede to that demand, the second of its kind.

The TSX Decision

15. On February 20, 2019, Acasta announced that the TSX had approved the Related Party Transaction.
16. The TSX erred in approving the Related Party Transaction without requiring approval by Minority Shareholders. Section 603 of the Company Manual of the TSX gives the TSX discretion to impose conditions on a proposed transaction, taking into account the quality of the market place. The TSX Decision fails to consider or give proper weight to the relevant factors set out in section 603 of the Company Manual:

- (a) The involvement of insiders or other related parties of the listed issuer in the transaction:

The Related Party Transaction is between Acasta and the Wachsbergs who control 36% of the Shares and had unilaterally appointed the directors who approved the transaction, and is priced at a significant discount to the trading price of the Shares.

- (b) The material effect on control of the listed issuer:

The Related Party Transaction materially affects control of Acasta given the number of Shares to be issued to WFI and their impact on any future vote for directors of the Company.

- (c) The listed issuer's corporate governance practices:

As set out above, the Related Party Transaction was: (i) threatened by the Company as a means of diluting Minority Shareholders; and (ii) followed the unilateral replacement of elected independent directors by the Wachsbergs after those elected independent directors favoured a value-enhancing transaction opposed by the Wachsbergs.

- (d) The listed issuer's disclosure practices:

Acasta has not disclosed information about the Wachsbergs' appointees to the board, and its February 8, 2019 press release announcing the Related Party Transaction and the subsequent Material Change Report fail to disclose the basis upon which the Wachsberg-appointed board approved the Related Party Transaction.

(e) The size of the transaction relative to the liquidity of the issuer:

The Shares are very thinly traded, and the Related Party Transaction involves the issuance of 6,499,426 Shares. In the 30 days prior to the TSX Decision, there were four days when no Shares traded on the TSX, and on the two days with the highest volume of trading only 29,500 Shares traded.

17. In view of the genesis of the Related Party Transaction, the circumstances in which it was approved, and the intended effect, it is contrary to the public interest for the Related Party Transaction to be allowed to proceed without the approval of Acasta's Minority Shareholders.
18. The profound problems with the Related Party Transaction are not remedied by the tactical invitation of Acasta for Anson and another objecting Shareholder to participate in a proposed financing transaction in lieu of the Related Party Transaction, as reflected in Acasta's February 22, 2019 press release announcing the closing of the Related Party Transaction. Anson refused to participate in the proposed alternative financing transaction. The invitation to participate does not adequately address any of the concerns identified above in paragraph 11. The opportunity to participate in the proposed alternative financing transaction was: (i) not offered to all Shareholders; (ii) transferred value and control from Minority Shareholders to the participants in the transaction; (iii) disproportionately benefitted the Wachsbergs; and (iv) an unnecessary financing in the context of Acasta's financial position. Anson was not prepared to participate, refusing to act in a manner that favours its interests and prejudices Acasta and its Minority Shareholders.

Need for a Stay

19. The immediate need for a stay of the TSX Decision was addressed by an undertaking Acasta made to the Commission, set out in Acasta's February 22, 2019 press release.

Other

20. Anson requests the record for the TSX Decision (the “TSX Record”) and any reasons for that decision (the “TSX Reasons”), and reserves its right to supplement or amend this Application upon receipt of the TSX Record and the TSX Reasons.
21. Sections 8, 21.7, and 127 of the Act.
22. Such further and other grounds as counsel may advise.

C. DOCUMENTS AND EVIDENCE

23. Anson relies on: (i) affidavit evidence, to be sworn; (ii) the TSX Record; and (iii) such further evidence as counsel may advise.

DATED this 27th day of February, 2019

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