



***THE COURT OF APPEAL FOR SASKATCHEWAN***

Citation: 2013 SKCA 134

Date: 2013-12-13

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Between:

Docket: CACV2486

101114386 Saskatchewan Ltd.  
101115379 Saskatchewan Ltd.  
Teamworx Productions Ltd.  
Idendego Inc.  
Alena Marie Pastuch  
Cryptguard Ltd.

Applicants

- and -

Hearing Panel of the Financial and Consumer Affairs Authority

Respondent

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Before:

Ottenbreit J.A. (in Chambers)

Counsel:

Louis Browne for the applicants

Ken Ready, Q.C., for the Hearing Panel of the Financial and  
Consumer Affairs Authority

Sonne Udemgba for the Saskatchewan Financial Services Commission

Application:

From: Financial and Consumer Affairs Authority

Heard: November 14, 2013

Disposition: Application dismissed

Written Reasons: December 13, 2013

By: The Honourable Mr. Justice Ottenbreit

**OTTENBREIT J.A.**

[1] Alena Marie Pastuch and the corporations 101114386 Saskatchewan Ltd., 101115379 Saskatchewan Ltd., Teamworx Productions Ltd., Idendego Inc. and Cryptguard Ltd. are involved in a hearing being conducted pursuant to *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, by the Hearing Panel of the Financial and Consumer Affairs Authority respecting certain violations of the *Act* alleged to have been committed by Ms. Pastuch and the corporations.

[2] Ms. Pastuch appeals the October 21, 2013, decision of the Hearing Panel made in the course of that hearing and seeks a stay of the decision and a stay of proceedings respecting the hearing.

[3] The application is brought pursuant to s. 11(8) of *The Securities Act, 1988*. It reads as follows:

11(8) Notwithstanding the taking of an appeal pursuant to this section, the decision appealed from takes effect immediately but the Commission or the Court of Appeal may grant a stay until disposition of the appeal.

[4] Much of the background and facts respecting this matter has already been set forth in the decision found at 2013 SKCA 122 respecting the application by Ms. Pastuch for a publication ban. Accordingly, I will not repeat all of it. However, as a preliminary matter some context respecting proceedings brought in this Court by Ms. Pastuch is necessary. Ms. Pastuch and the corporations set out in the style of cause on this appeal but not named as appellants have in the recent past filed two other appeals with this Court respecting the decisions of the Hearing Panel. The first one filed December 3, 2012, challenges the Hearing Panel's November 28, 2012, decision to deny the requests of Ms. Pastuch and the corporations respecting the calling of

certain witnesses. The second one filed June 14, 2013, challenges the decision of the Hearing Panel dated May 28, 2013, setting the continuation of the hearings for June 21, 2013, and raises issues about non-disclosure. On this second appeal Ms. Pastuch and the corporations also applied for a stay in respect of the May 28, 2013, decision and for a stay of proceedings of the hearing before the Hearing Panel generally. On June 24, 2013, this Court dismissed that application for a stay on the basis that the Court was reluctant to deal with issues on a piecemeal basis and that the issue of non-disclosure was best left to the panel hearing the appeal. I set out the foregoing as background and as a preface to my reasons which follow.

[5] The October 21, 2013, decision of the Hearing Panel seeks to have the hearing recommence November 15, 2013, and to have Ms. Pastuch and the corporations submit written closing arguments based on the evidence the Hearing Panel has received to date. Ms. Pastuch's stay application seeks not only to stay the October 21, 2013, decision of the Hearing Panel in the sense of ensuring the November 15, 2013, recommencement does not proceed, but to also stay the hearings before the Hearing Panel as a whole until this appeal is heard. However, the November 15, 2013, date has obviously passed and the recommencement on that date is moot. The relief requesting a stay for the proceedings as a whole is identical to Ms. Pastuch's stay application which was dismissed June 24, 2013. The material that Ms. Pastuch has filed in this stay application is similar if not identical in content to that filed in respect of the former stay application.

[6] The notice of appeal filed by Ms. Pastuch in this matter, among other grounds, states that she faces a serious medical condition that would prove a

risk to her as well as others. Her application for the stay is grounded on some medical evidence. Ms. Pastuch is part of an organ transplant process which hopefully will save the life of one of her family members. Additionally, there is evidence that Ms. Pastuch had earlier in 2013 been ill and was hospitalized. The notes from her doctor regarding her past and present medical condition and her involvement in the organ transplant process are not the usual medical reports but rather updates from her doctor about her ability to continue the hearing before the Hearing Panel. They appear to be created to persuade the Hearing Panel that Ms. Pastuch could not participate further in the proceedings before the Hearing Panel. Her counsel argues that her medical condition and present medical situation is a life and death matter although whose life and death is not clear even if this were true. The medical evidence provided is incomplete and it is difficult to determine objectively how or why Ms. Pastuch's participation in the transplant program will hinder her involvement in the proceedings before the Hearing Panel.

[7] The test for granting the stay of proceedings pending an appeal is the same as for the granting of an injunction (*H.S. v. C.S.*, 2006 SKCA 93, 285 Sask. R. 280, at para. 4). It is the so-called tripartite test established by the Supreme Court of Canada in *Manitoba v. Metropolitan Stores*, [1987] 1 S.C.R. 110, and *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311. The three stages of the test are:

1. Is there a serious question to be tried?
2. Would the applicant suffer irreparable harm but for the stay?
3. Where does the balance of convenience lie?

[8] Generally speaking the power to impose a stay of proceedings is discretionary to be exercised on the basis of justice and appropriateness: *Tekarra Properties Ltd. v. Saskatoon Drug and Stationery Co.* (1985), 17 D.L.R. (4<sup>th</sup>) 155 (Sask. C.A.).

[9] After reviewing the material filed by Ms. Pastuch, I am not satisfied on the whole that the test for a stay as set forth in *Metropolitan Stores* has been met. I say this for a number of reasons. In this case Ms. Pastuch argues primarily that there will be irreparable harm if the stay is not granted based on her medical situation. However, the medical evidence does not convince me this is a life and death situation or that Ms. Pastuch's medical situation would prevent her from fully participating in the proceedings before the Hearing Panel. It is obvious that she has substantial resources at her disposal to participate in legal or administrative proceedings albeit with some assistance. For example, on this application alone Ms. Pastuch has filed over 80 pages of pleadings in the space of 9 days; an impressive marshalling of resources despite Ms. Pastuch's medical problems or situation. I am not convinced in all the circumstances that there would be irreparable harm to Ms. Pastuch medically or to her ability to participate fully in the hearings. Likewise, I am not satisfied that her appeal in this case would be prejudiced by not granting a stay.

[10] As well, Ms. Pastuch's appeal in this case again challenges a procedural order of the Hearing Panel. On that basis this Court has the same reluctance as in the previous application for a stay to address issues piecemeal in this matter by way of a stay. The application for a stay in this matter is, in my view, an

attempt to obtain the same relief which has already been refused by this Court earlier albeit in relation to a different procedural order of the Hearing Panel.

[11] Lastly, this matter has proceeded by fits and starts since the hearing commenced December 5, 2012. In my view the balance of convenience in this case lies with the public interest in having the matter proceed.

[12] Based on all the foregoing, applying the test in *Metropolitan Stores* Ms. Pastuch has not satisfied her onus to demonstrate that it is just and appropriate that a stay of proceedings should be granted. Accordingly the application is dismissed. The Hearing Panel shall have its costs of \$1,500.00 in any event of the cause payable forthwith.

DATED at the City of Regina, in the Province of Saskatchewan, this 13<sup>th</sup> day of December, A.D. 2013.

“Ottenbreit J.A.”

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OTTENBREIT J.A.