



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL DATE: June 24, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: In the Matter of BALBOA INC. et al

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] Three motions are before the Court today.

[2] The Applicants seek a stay extension to July 8, which is opposed, and they seek an extension of the date by which the Monitor is required to file any motion for advice and directions pursuant to section 21 of the SISP to July 31, 2024, together with an order sealing Confidential Appendix 1 to the Fifth Report of the Court-appointed Monitor. The latter two heads of relief are not opposed by any party, and indeed are supported by the Secured Lenders and the Monitor.

[3] The Secured Lenders move for an order granting the Monitor significantly expanded powers, seeking certain relief in respect of counsel to the Applicants and requiring counsel to take instructions from the Monitor (with some exceptions for privileged information); relief concerning legal fees of counsel to the Applicants; and an order providing that the SID Companies be required to continue to perform services as required by the Monitor.

[4] The Monitor moves for stay extension to July 31, provided that the Expanded Monitor Powers Order is granted; an order terminating the stay of proceedings as against the Additional Stay Parties; authorization for the Monitor to serve and make publicly available a largely unredacted version of the Fourth Report, and an order approving the Fifth Report and the activities described therein.

[5] All parties consent to the extension of time in respect of the SISP materials as described above. I am satisfied that makes good practical sense and the extension is approved.

[6] Similarly, the sealing order in respect of Confidential Appendix 1 is consented to by all parties. It relates to confidential bid documents and LOIs in respect of the ongoing SISP. There is no question that the public disclosure now of those materials could adversely affect the SISP results and would, I am satisfied, impair the integrity of that process as it continues. The proposed sealing relief is very limited in scope to that one document, which is a summary of the LOIs, and is limited in time - it is effective until the SISP is completed, or further order of the Court.

[7] I am satisfied that the test set out by the Supreme Court of Canada in *Sierra Club* as refined in *Sherman Estate* has been met. The sealing relief is granted.

[8] The balance of the relief sought by all parties is vigorously contested. The Applicants seek an adjournment of the motions of the Secured Lenders and the Monitor respectively, and those parties oppose the adjournment.

[9] The complicating factor is that the stay of proceedings currently in effect expires today.

[10] While the basis for the competing heads of relief is certainly contested, the primary submission of the Applicants in seeking the adjournment is the fact that the Secured Lenders have declined to produce their affiants for cross-examination, declined to offer up other witnesses for examinations pursuant to Rule 39.03, and the Monitor has refused or declined to answer written interrogatories.

[11] The Secured Lenders submit that the Applicants are attempting to further delay, in circumstances where 100% of the lenders, both secured and unsecured, support the motion of the Secured Lenders and the motion of the Monitor, there has been a complete loss of confidence in management of the Applicants, and the requested relief is required urgently, absent which there is no support from any stakeholders or the Court-appointed Monitor for a stay extension. The Secured Lenders submit that they declined to produce their affiants for cross-examination, since even the proposed cross examinations were an attempt at delay and constituted an abuse of process.

[12] At the request of the parties, the matter was stood down for a brief adjournment in order that the parties could continue apparently ongoing discussions about a possible consensual resolution. Upon resuming, the Court was advised that the parties had made some progress, but had not resolved matters, with the result that the above-noted positions were maintained.

[13] In the circumstances, I granted an adjournment, albeit for a very short period of time and not for the two weeks requested by the Applicants. In my view, the Applicants are entitled to test the evidence put against them by parties adverse in position, by cross-examination. It is no answer to that entitlement of the Applicants for other parties to submit, as they have done, that the Court has the discretion to give little or no weight to that evidence. The Applicants are entitled to cross-examine.

[14] I must balance that right, however, against the very serious nature of the allegations made in this case against the Applicants and others, and the fundamental importance of protecting assets and maximizing recoveries for all stakeholders.

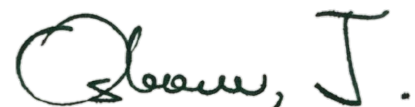
[15] Accordingly, this matter is adjourned until 1:30 PM on Wednesday, June 26, 2024, at which time I will hear these motions. The Secured Lenders will make their affiants available for cross-examination in the interim. I will deal on the return of these motions with what flows from any cross examinations that have been conducted. I urged the parties to be practical and focus on those matters that were important to the issues in considering their respective positions with respect to inquiries, questions and refusals.

[16] I leave it to the parties to consider whether Rule 39.03 examinations are required, and if so, of whom and to what extent. To the extent that those issues cannot be sorted out on consent, as I would hope they would be, I will address any issues on the return of the motions.

[17] The Court-appointed Monitor will respond to reasonable and proportionate written interrogatories. I pause to observe that I am advised that no such questions have been asked of the Monitor to date, notwithstanding the submission of the Applicants. Again, I will address on the return of the motions in the issues that flow from whatever the status of questions and answers may be at that time.

[18] The adjournment until June 26 is without prejudice to the rights of all parties to their positions to be advanced at that time. In the interim, the stay of proceedings currently in effect is extended until June 26, 2024.

[19] Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering. Given the significant amount of public interest in this matter, the Court-appointed Monitor will post this Endorsement and that order on its website as soon as possible and ensure that all affected parties are aware of the return of these motions on Wednesday, June 26.

A handwritten signature in black ink, appearing to read "Owen, J." with a stylized flourish at the end.

Date: June 24, 2024