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JUDICIAL CENTRE

EDMONTON

PLAINTIFF/APPLICANT

WADE WOOD

DEFENDANTS/RESPONDENTS

GERALD BEVAN, SPHERICAL CAPTIAL
INC., AND SPHERICAL BOND LTD.

DOCUMENT

BENCH BRIEF OF THE APPLICANT,
WADE WOOD

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
3200, 10020 100 Street
Edmonton, Alberta T5J 0N3

Attention: Mathieu J. LaFleche
Telephone No.: 780-917-5249
Fax No.: 780-421-7951
Client File No.: 74124.1

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I. INTRODUCTION

1. The Applicant, Mr. Wade Wood ("**Mr. Wood**"), seeks an Order:
 - (a) granting a receivership order appointing MNP LLP as receiver for Lionhart Capital Ltd. ("**Lionhart**"), without security, over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Receivership**");
 - (b) permitting the Receiver to liquidate all assets of Lionheart for the purpose of winding up and dissolving Lionheart and granting leave to Mr. Wood for the subsequent application of the proceeds of that liquidation towards satisfaction of the judgment arising from the trial of this action;
 - (c) compelling Mr. Bevan to:
 - (i) produce all books, records, documentation, and financial statements relating to Lionhart and provide them to Mr. Wood and the Receiver, within 20 days of this Order being granted; and
 - (ii) disclose the name and contact information for Lionhart's corporate accountant to Mr. Wood and the Receiver, within 5 days of this Order being granted;
 - (d) immediately prohibiting the transfer of shares in Lionhart without further Court Order; and,
 - (e) awarding costs of this Application to Mr. Wood on a solicitor-client basis, to be payable forthwith.

II. FACTS

2. On December 10, 2021, Mr. Wood successfully obtained a judgment against Mr. Bevan, among others pursuant to which Mr. Bevan now owes Mr. Wood the amount of \$3,723,635.11 (the "**Outstanding Judgment**"). At the trial of this matter, this Court found that Mr. Bevan had committed reckless misrepresentation towards Mr. Wood, had made statements with a degree of

knowledge regarding the falsity, and that Mr. Bevan's behavior in the events giving rise to the lawsuit (and testimony at trial) were "fraught with inconsistencies, insincerity, evasion, and implausibility".

Trial Judgment at para 139 [TAB 1]

3. Mr. Bevan intermingled the business affairs of Spherical Capital, one of the other judgment defendants, and his other corporation, Lionhart. Mr. Bevan gave evidence at questioning that the two companies were "run together". He described their affairs as being "integrated" and they shared infrastructure and employees. There was no allocation of costs as between the two companies until an after-the-fact one was done when the books were "re-done".

February 6, 2018 Questioning Transcript
Read-In, Exhibit 11 at page 79, lines 4-10 [TAB 2]

4. To enforce the Outstanding Judgment, Mr. Bevan was asked to swear a Financial Statement of Debtor. He swore to having no employment, no business income, and nominal other assets. He also swore that he moved to Puerto Vallarta, Mexico, immediately after the judgment in this matter was granted, in December of 2021. With respect to securities, he stated he had 100 Shares (in a single unnamed company) with a net book value of zero.

Affidavit of Wood at Exhibit 4 [TAB 3]

5. In examination in aid, and contrary to his sworn Financial Statement of Debtor Mr. Bevan testified that he actually owned the shares of at least three companies – Spherical Bond, Spherical Capital, and Lionhart Capital. Mr. Bevan could not locate the minute book or share certificates for Lionhart. The registered office for Lionhart was found by the Bailiff to be a Calgary Pack and Ship Store. Lionhart itself has no secured creditors listed in the Alberta PPR.

Examination in Aid at pages 31 – 33 [TAB 4]

Affidavit of Wood at Exhibit 7 Undertaking Answers [TAB 3]

Affidavit of Wood at Exhibit 13 [TAB 3]

Email from Andrea Shiels of West Coast Title Search Ltd., dated February 23, 2023 [TAB 5]

Personal Property Registry Search of Lionhart Capital, dated February 17, 2023 [TAB 6]

6. Up until he left for Mexico, on January 4, 2022, Mr. Bevan resided at 11396 Chalet Road, British Columbia (the "**Residence**"). He was co-habiting with his partner, Ms. Hahrt, up to that point. At the time of his departure for Mexico in 2022 following judgment, Mr. Bevan's property (such as furniture, clothing, tools, vehicles, and kitchen items) remained at 11396 Chalet Road.

Examination in Aid at pages 15 – 23 [TAB 4]

7. Despite this, Mr. Bevan purportedly separated Ms. Hahrt in February of 2020 (as trial in the action was being scheduled) pursuant to which Ms. Harht received title to the Residence and Mr. Bevan received Lionhart. While Mr. Bevan swore to having to pay Ms. Hahrt \$4,500 per month in "alimony" no such obligation is set out in the separation agreement he produced when pressed in examination in aid.

Affidavit of Wade Wood at Exhibit 11 [TAB 3]

8. A claim has been filed in BC seeking a declaration that the conveyance of the Residence to Ms. Harht is a fraudulent conveyance. When service of the claim was attempted on Ms. Hahrt the process server was advised that Ms. Hahrt was also in Puerto Vallarta.

Email from Andrea Shiels of West Coast Title Search Ltd., dated February 23, 2023 [TAB 5]

III. LAW AND ARGUMENT

A. Appointment of a Receiver

9. Section 85 of the *Civil Enforcement Act*, RSA 2000, c C-15 (the "**Civil Enforcement Act**") permits the Court to appoint a receiver of any exigible property of an enforcement debtor that cannot otherwise be conveniently realized. Any prospective receiver must be sufficiently qualified and agree to the appointment in writing. Alternatively, Section 13(2) of the *Judicature Act*, RSA 2000, c J-2 permits the appointment of a receiver in any case where it appears to be just and convenient to do so.

Civil Enforcement Act, [RSA 2000, c C-15](#) at s 85 & 87 [TAB 7]

Judicature Act, [RSA 2000, c J-2](#), s 13 [TAB 8]

10. The *Civil Enforcement Act*, *supra*, outlines what the Court must consider when determining whether to appoint a receiver, including:

- (a) whether it would be more practical to realize on the property through other proceedings authorized under the *Civil Enforcement Act*;
- (b) whether appointing a receiver would be an effective means of realizing on the property;
- (c) the probable cost of the receivership in relation to the probable benefits to be derived by the appointment of a receiver;
- (d) whether the appointment of a receiver would cause undue hardship or prejudice to the enforcement debtor or a third person; and,
- (e) the likelihood of the writs against the enforcement debtor being satisfied without resorting to the property in question.

Civil Enforcement Act, [RSA 2000, c C-15](#) at s 86 [TAB 7]

11. A number of non-exhaustive factors have been identified by the Courts in assessing whether it is just and convenient to appoint a receiver:

- (a) whether irreparable harm might be caused if no order were made;
- (b) the risks to the parties;
- (c) the nature of the property;
- (d) the risk of waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;

- (f) the balance of convenience;
- (g) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (h) whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- (i) the effect of the order upon the parties;
- (j) the conduct of the parties;
- (k) the length of time that a receiver may be in place;
- (l) the cost to the parties;
- (m) the likelihood of maximizing return to the parties; and,
- (n) the goal of facilitating the duties of the receiver.

Paragon Capital Corporation v Merchants & Traders Assurance Co,
[2002 ABQB 430](#) at para 27 [TAB 9]

Lindsey Estate v Strategic Metals Corp, [2010 ABQB 242](#) at para 32,
aff'd [2010 ABCA 191](#) [TAB 10]

Kasten Energy Inc v Shamrock Oil & Gas Ltd, [2013 ABQB 63](#) at para 13 [TAB 11]

12. Given the challenges of enforcing the Outstanding Judgment against Mr. Bevan, it is just and convenient to grant a Receivership over Lionhart. It is in the best interest of all parties that a receiver-manager is appointed to realize on Lionhart's assets, undertakings and property in a manner that is efficient, open and transparent.

Judicature Act, [RSA 2000, c J-2](#), s 13 [TAB 8]

13. Appointing a receiver would be the only effective means of realizing on any value associated with Lionhart's. These shares (and any value arising from Mr. Wood's claim associated

with the Residence) represent the only avenues for attempting to satisfy the judgment debt. Mr. Bevan, the sole shareholder of Lionhart, has been unable to produce share certificates or other corporate organizational documents and so the shares in Lionhart cannot be effectively seized for a sale of the business as a going concern.

14. The appointment of a Receiver will allow assets to be preserved and a further investigation be done into the whereabouts of Lionhart's assets (if any) that have been disposed of. Given the nature of the claim and Mr. Bevan's repeated lies and misrepresentations, a Receiver is the only practical options to preserve financial records and dispose of Lionhart's assets in an efficient manner. This type of investigation is particularly important in light of the assertion now effectively being made by Mr. Bevan (and Ms. Hahrt) that the exigible assets of Lionhart are equivalent to the value of the Residence.

15. Without protection in place, there is a real risk that very little, if any, recovery will be possible. Mr. Bevan has done nothing to satisfy the Judgment except further obfuscation. As Mr. Bevan's shares in Lionhart would form part of the exigible assets that Mr. Wood would be able to realize on, there is no prejudice here, particularly as there are no secured creditors and Mr. Wood's requested relief contemplates a further Court order before funds (if any) are distributed to Mr. Wood. The balance of convenience favours the placement of a Receiver.

B. Liquidation

16. Section 62(i) of the *Civil Enforcement Act, supra*, permits the Court to order the liquidation of seized shares or direct that an Alberta private company be liquidated and its proceeded be disposed of in accordance with the law. As the shares in Lionhart would already be seized (but for the fact that their location cannot be identified due to a lack of information from Mr. Bevan and disappearance of corporate records), it is appropriate to grant wide liquidation powers to the proposed Receiver.

Civil Enforcement Act, [RSA 2000, c C-15](#) at s 62(i) [TAB 7]

IV. RELIEF SOUGHT

17. Mr. Wood respectfully request that his Application be granted with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Edmonton, Alberta this 9th day of March, 2023.

BENNETT JONES LLP

Per: 

Mathieu Lafleche & Tayler Meagher
Counsel for the Applicant, Wade Wood

V. TABLE OF AUTHORITIES

1. Trial Judgment, filed December 10, 2021.
2. February 6, 2018 Questioning Transcript Read-In, Exhibit 11.
3. Affidavit of Wade Wood, filed February 23, 2023.
4. Examination in Aid of Gerald Bevan, dated May 3, 2022.
5. Email from Andrea Shiels of West Coat Title Search Ltd., dated February 23, 2023.
6. Personal Property Registry Search of Lionhart Capital, dated February 17, 2023
7. *Civil Enforcement Act*, [RSA 2000, c C-15](#)
8. *Judicature Act*, [RSA 2000, c J-2](#)
9. *Paragon Capital Corporation v Merchants & Traders Assurance Co*, [2002 ABQB 430](#)
10. *Lindsey Estate v Strategic Metals Corp*, [2010 ABQB 242](#) at para 32, aff'd [2010 ABCA 191](#)
11. *Kasten Energy Inc v Shamrock Oil & Gas Ltd*, [2013 ABQB 63](#)