Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ONTARIO SECURITIES COMMISSION

Applicant

- and –

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND, and CHRYSALIS YOGA INC.

Respondents

Application under Section 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended

SUBMISSION OF THE RECEIVER

(Re: Jorge Lopehandia Request to Adjourn the Receiver's Motion Returnable June 2, 2020)

Date: May 31, 2020

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OVERVIEW OF OPPOSITION TO ADJOURNMENT REQUEST

1. The Receiver opposes the adjournment request made by Jorge Lopehandia ("**Mr. Lopehandia**"), a non-party to this proceeding, of the Receiver's Motion returnable June 2, 2020.[1]

2. As is set out in the Receiver's prior reports to the Court, and in particular the Fourth Report,[2] Mr. Lopehandia has raised similar allegations and claims against the Receiver and the Crystal Wealth Group on a number of occasions in the past, beginning in December 2017.

3. Pursuant to the Creditor Claims Procedure Order issued in this proceeding, the deadline for filing claims against the Crystal Wealth Group was August 3, 2017 (the "**Claims Bar Date**").[3] Mr. Lopehandia did not file a claim, and is accordingly not entitled to assert any such claim, or to receive any distributions from the Crystal Wealth Group.[4]

4. The Receiver complied with the Creditor Claims Procedure, including ensuring that all known and unknown creditors of the Crystal Wealth Group had notice of the Creditor Claims Procedure Order.[5]

5. An adjournment of this motion will cause undue hardship to those unit holders of the Crystal Wealth Funds who are expecting to receive a distribution from the Receiver if the relief sought by the Receiver on this motion is granted.

6. There are no special circumstances or material reasons which would warrant granting Mr. Lopehandia's adjournment request.[6]

MR. LOPEHANDIA'S CLAIMS ARE BARRED

7. Unless otherwise defined herein, all capitalised terms are intended to have the meaning ascribed to them in the Receiver's Fifth Report dated May 19, 2020[7] (the "**Fifth Report**").

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[1] Compendium of the Receiver dated May 31, 2020 ["Compendium"], Tab 1.
[2] Fourth Report of the Receiver dated July 20, 2018, at paras. 179 to 190
[3] Creditor Claims Procedure Order issued August 3, 2017, Compendium, Tab 3.
[4] Compendium, Tab 2 at p. 116 (Excerpt from the Receiver's Second Report dated November 24, 2017)
[5] Compendium, Tab 2 at p. 116 (Excerpt from the Receiver's Second Report dated November 24, 2017)
[6] Consolidated Practice Direction Concerning the Commercial List, s. 28.
[7] Fifth Report of the Receiver dated May 19, 2020.

8. Prior to the Appointment Order, the Respondent, Crystal Wealth Management System created and managed a number of proprietary investment funds, including the Respondent, Crystal Wealth Enlightened Factoring Strategy (the "**Factoring Fund**").

9. The Factoring Fund entered into a Gold Sale/Purchase Agreement with Solid Holdings Ltd. ("**Solid Holdings**" and the "**Solid Holdings Loan**"). Under the Solid Holdings Loan, the Factoring Fund advanced $300,306.00 to Solid Holdings.[8]

10. Both Stanley Spletzer ("**Mr. Spletzer**") and Mr. Lopehandia hold themselves out as Directors of Solid Holdings.

11. As detailed in the Receiver's Fourth Report, in the course of the Receiver's collection efforts concerning the Solid Holdings Loan, the Receiver exchanged various communications with Mr. Spletzer and Mr. Lopehandia during the period of December 2017 to June 1, 2018 in which they made claims and allegations against the Crystal Wealth Group.[9]

12. For example, in a December 27, 2017 letter from Mr. Spletzer to the Receiver, he claimed that *"Crystal Wealth owes Mr. Jorge Lopehandia 4-5 million dollars"*.[10] Mr. Spletzer enclosed with his letter an undated letter from Mr. Lopehandia making various allegations against the Receiver, the Crystal Wealth Group, and others.[11]

13. As noted at paragraph 189 of the Fourth Report, following a conference call between the Receiver, Aird & Berlis LLP, and Messrs. Spletzer and Lopehandia on May 2, 2018, more than two years ago, Aird & Berlis LLP, on behalf of the Receiver, wrote to both Messrs. Spletzer and Lopehandia confirming that:[12]

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[8] Compendium, Tab 2 (Excerpt from the Receiver's Second Report dated November 24, 2017).
[9] The various communications which the Receiver and its lawyers exchanged with Messrs. Spletzer and Lopehandia during the period of December 2017 through June 1, 2018 is detailed in the Fourth Report of the Receiver dated July 20, 2018, at paras. 179 to 190.
[10] Compendium, Tab 4 (Letter to the Receiver from S. Spletzer dated December 27, 2017, Appendix 66 to the Fourth Report of the Receiver dated July 20, 2018).
[11] Compendium Tab 5 (Letter from J. Lopehandia enclosed with Letter from S. Spletzer dated December 27, 2017, Appendix 67 to the Fourth Report of the Receiver dated July 20, 2018,).
[12] Compendium, Tab 6 (Email from the Receiver to J. Lopehandia and S. Spletzer dated May 2, 2018, Appendix 72 to the Fourth Report of the Receiver dated July 20, 2018,).

a) Mr. Spletzer and Mr. Lopehandia acknowledged the indebtedness owing under the Solid Holdings Loan and that they have refused to make payment of same to the Receiver on the basis that they have a claim against the Crystal Wealth Group; and

b) no claims were submitted by Solid Holdings, or by any entities with which Mr. Lopehandia or Mr. Spletzer were affiliated with, as was required by the Creditor Claims Procedure Order and as such, any such claim, if it exists, is barred.

14. Due to the nonpayment of the Solid Holdings Loan, in September 2018, the Receiver brought a bankruptcy application against Solid Holdings in the Supreme Court of British Columbia (the "**B.C. Court**"), in Court File No. B-180514 (the "**Solid Holdings Bankruptcy Application**").

15. In opposition of the Solid Holdings Bankruptcy Application, Mr. Lopehandia filed an affidavit sworn September 15, 2018 (the "**Lopehandia Affidavit**"). The Lopehandia Affidavit raised similar allegations, conspiracy theories and arguments concerning the Crystal Wealth Group.[13]

16. The claims and allegations made in the Lopehandia Affidavit were rejected by the B.C. Court. In a decision of the Supreme Court of British Columbia issued on February 1, 2019 (the "**Solid Holdings Bankruptcy Decision**"),[14] the Honourable Madam Justice Jackson granted the Receiver's bankruptcy application, despite the purported claims by Solid Holdings and Mr. Lopehandia against the Crystal Wealth Group. Justice Jackson concluded as follows:[15]

> [29] While Solid Holdings submits it is quite possible its claim could succeed, I disagree. There is no *bona fide* claim made by Solid Holdings against Crystal Wealth; there is no claim at all, nor can there be one without a further order of the Ontario Superior Court. Even if a claim were possible, the nebulous allegations made by Solid Holdings of wrongdoing by Crystal Wealth and its inexplicit assertions of damage are not even as developed as those rejected by Justice Farley in *Kenwood Hills Development Inc., Re*, [1995] O.J. No. 161 at para. 4 as being vague and uncertain…

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[13] Compendium, Tab 7 (Affidavit of Jorge Lopehandia, sworn September 15, 2018).
[14] *Solid Holdings Ltd. (Re)*, 2019 BCSC 126 (CanLII), <http://canlii.ca/t/hxbcp>, Compendium, Tab 8 ["*Solid Holdings*"].
[15] *ibid*, at para. 29.

17. In a unanimous decision issued on June 17, 2019, the British Columbia Court of Appeal dismissed Solid Holdings' appeal.[16]

THE ADJOURNMENT REQUEST OUGHT NOT BE GRANTED

18. For the reasons stated above, Mr. Lopehandia does not have standing in the Receivership Proceedings, or any basis for his adjournment request, and is in fact barred by the Creditor Claims Procedure Order of this Court from asserting the claims forming the basis of his adjournment request.

19. An adjournment of this motion, which was permitted by the Court to be scheduled on an urgent basis, will cause undue hardship to those unit holders of the Crystal Wealth Funds who are expecting to receive a distribution from the Receiver if the relief sought by the Receiver on this motion is granted.

20. For the reasons stated herein, the Receiver respectfully requests that Mr. Lopehandia's adjournment request be denied by this Honourable Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: May 31, 2020

per ______________________________

Steven L. Graff – LSO No. 31871V
Mark van Zandvoort – LSO No. 59120U
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Lawyers for Grant Thornton Limited, in its capacity as Court-Appointed Receiver of the Crystal Wealth Group

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[16] *Solid Holdings Ltd. v. Grant Thornton Limited*, 2019 BCCA 231 (CanLII), <http://canlii.ca/t/j14gk>, Compendium, Tab 9, at paras. 11-15, 25-28.

ONTARIO SECURITIES COMMISSION Applicant

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