

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) WEDNESDAY, THE 15TH DAY
)
JUSTICE GLUSTEIN) OF MAY, 2019

BETWEEN:

MARC CHARETTE and ANDREW CUMMING

Plaintiffs

and

TRINITY CAPITAL CORPORATION,
TRINITY WOOD CAPITAL CORPORATION,
CAPITAL STRUCTURES LTD.,
CAPITAL STRUCTURES 2002 LTD.,
TC CAPITAL LIMITED, JAMES DOUGLAS BEATTY,
JAMES GORDON ARNOLD,
THE JOHN McKELLAR CHARITABLE FOUNDATION,
FRASER MILNER CASGRAIN LLP, GRAHAM TURNER,
BDO DUNWOODY LLP and RALPH THOMAS NEVILLE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(Settlement Approval)

THIS MOTION made by:

- (a) Marc Charette and Andrew Cumming for an Order approving the settlement of the Action; and
- (b) Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation for the approval of the agreement respecting fees and disbursements between Strosberg Sasso Sutts LLP, Groia & Company



Professional Corporation, Marc Charette and Andrew Cumming pursuant to subsection 32(2) of the *CPA*;

was heard this 15th day of May, 2019 at Toronto, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavits of:
 - (i) Marc Charette sworn March 27, 2019;
 - (ii) Andrew Cumming sworn March 28, 2019;
 - (iii) Justin Smith sworn April 30, 2019;
 - (iv) Shelley Woodrich sworn March 18, 2019; and
 - (v) Gregory Wrigglesworth sworn May 14, 2019.

AND ON HEARING the submissions of Counsel for the Plaintiffs and the Settling Defendants;

AND ON BEING ADVISED that:

- (a) the Plaintiffs and the Settling Defendants consent to this Order;
- (b) Epiq Class Action Services Canada, Inc. consents to being appointed Administrator;
- (c) Gregory D. Wrigglesworth consents to being appointed Referee; and
- (d) as of May 13, 2019, there have been no objections to the proposed settlement received by Gregory D. Wrigglesworth;

AND without any admission of liability on the part of any of the Settling Defendants, who have denied liability;

1. THIS COURT ORDERS AND DECLARES that, except as otherwise stated, the capitalized terms used in this order have the meanings attributed to them in Schedule 6 and that the following definitions also apply:

- (a) "Claims Bar Deadline" means 5:00 p.m. eastern standard time on December 31, 2019;
- (b) "Class Counsel" means Strosberg Sasso Sutts LLP and Groia & Company Professional Corporation;
- (c) "Epiq" means Epiq Class Action Services Canada, Inc.
- (d) "Fee Agreement" means the agreements between Marc Charette, Andrew Cumming, Strosberg Sasso Sutts LLP (formerly Sutts, Strosberg LLP) and Groia & Company Professional Company signed by Marc Charette on February 5, 2011 and Andrew Cumming on June 5, 2012;
- (e) "Notice" means the notice to the Class of the approval of the settlement in accordance with the Notice Plan;
- (f) "Settlement Agreement" means the settlement agreement dated February 13, 2019 (without schedules); and
- (g) "Third Party Actions" means the actions commenced in the Court in Court File Numbers CV-11-422085-00A1, CV-11-422085-00A2 and CV-11-422085-00A3.

2. THIS COURT ORDERS AND ADJUDGES that the Settlement is fair and reasonable and in the best interests of the Class Members and is approved.

3. THIS COURT ORDERS that:

- (a) the Settlement Agreement attached as Schedule 1, is approved and shall be implemented in accordance with its terms;

- (b) the Notice generally in the form attached as Schedule 2, is approved;
- (c) the Plan of Notice generally in the form attached as Schedule 4, is approved;
- (d) the Plan of Allocation generally in the form attached as Schedule 3, is approved; and
- (e) the Claim Form generally in the form attached as Schedule 5, is approved.

4. THIS COURT ORDERS that the Class Members shall be given notice of this Order substantially in the form of the Notice disseminated in accordance with the Plan of Notice.

5. THIS COURT ORDERS AND DECLARES that the Notice to the Class Members described in paragraph 4 satisfies the requirements of section 17(6) of the *CPA*.

6. THIS COURT ORDERS that counsel to Fraser Milner Casgrain LLP shall forthwith provide Class Counsel with a summary of the most recent contact information for the Class Members that is in its possession.

7. THIS COURT ORDERS that after the distribution of the Notice, Class Counsel shall file with the court an affidavit confirming the distribution of the Notice in accordance with and as required by this Order.

8. THIS COURT REQUESTS that Guy Du Pont and/or Davies Ward Phillips & Vineberg LLP in Montreal provide a copy of the Notice to their clients who are Class Members and their reasonable costs incurred in doing so shall be a Non-Refundable Expense.
9. THIS COURT ORDERS that Epiq is appointed, until further order of the Court:
- (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
 - (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this Order.
10. THIS COURT ORDERS that:
- (a) Epiq shall render monthly invoices to and for the approval of Class Counsel for its services as Administrator; and
 - (b) Epiq's monthly invoices shall be paid from the Escrow Account up to a maximum amount of \$450,000 plus HST, subject to further order of the Court.
11. THIS COURT ORDERS that Gregory D. Wigglesworth:
- (a) is appointed as Referee, until further order of the Court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
 - (b) shall be paid up to \$25,000.00, plus HST from the Escrow Account for his services as Referee.

12. THIS COURT ORDERS AND DECLARES that all provisions of the Settlement Agreement (including the recitals and definitions) form part of this Order and are binding upon the Settling Defendants in accordance with the terms thereof, and upon the Plaintiffs and all Class Members in accordance with the terms of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.
13. THIS COURT ORDERS AND DECLARES that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
14. THIS COURT ORDERS AND DECLARES that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Claims.
15. THIS COURT ORDERS that the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
16. THIS COURT ORDERS that to participate in this Settlement, Class Members must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Court orders otherwise.

17. THIS COURT ORDERS that the Plaintiffs, the Settling Defendants, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of the implementation and/or the administration of the Plan of Allocation or any other matter relating to the implementation of the settlement.

18. THIS COURT ORDERS that no person may bring any action or take any proceedings against the Plaintiffs, Settling Defendants, Administrator, Referee, or their employees, directors, officers, partners, agents, trustees, parents, predecessors, or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this Order except with leave of the Court.

19. THIS COURT ORDERS that:

- (a) the Fee Agreement is approved; and
- (b) Class Counsel's fees are fixed at \$11,100,000 plus HST in the amount of \$1,443,000, plus a pro rata share of all interest earned on the Settlement Amount to the date of payment, and their disbursements are fixed at \$53,897 including HST, all of which shall be paid from the Escrow Account on the Effective Date.

20. THIS COURT ORDERS that the Class Proceedings Fund is entitled to a levy in the amount of \$2,335,946.89, payable as a first charge on the distribution to or on behalf of each eligible Class Member, plus the amount of \$372,000 for outstanding disbursements that have not yet been repaid to the Class Proceedings Fund in accordance with section 10(3) of O. Reg. 771/92. This levy is to be paid to the Class Proceedings Fund on the undertaking of Gina Papageorgiou on behalf of the Fund to return to the

administrator any portion of the payment that is ultimately determined to be greater than 10% of the net settlement amount.

21. THIS COURT ORDERS that if there is a dispute regarding the calculation or payment of the Class Proceedings Fund levy, the amount shall be determined by Justice Glustein.

22. THIS COURT ORDERS that Marc Charette and Andrew Cumming shall each be awarded an honorarium of \$50,000 and such amounts shall be paid from the Escrow Account by Strosberg Sasso Sutts LLP forthwith after the Effective Date.

23. THIS COURT ORDERS that this Action, except as provided for in this Order, is dismissed without costs and with prejudice.


JUSTICE Glustein

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 16 2019

PER/PAR 