
EXHIBIT "22"

**To the Receiver's Seventh Report to Court
Dated January 14, 2019**

Osler, Hoskin & Harcourt LLP
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December 10, 2018

Randal Van de Mosselaer
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Our Matter Number: 1196307

Toronto

Montreal

Sent By Ordinary Mail and Electronic Mail (Arnoldbase@shaw.ca)

Ottawa

Arnold and Susan Breitkruetz
912A-69 Ave SW
Calgary, Alberta T2V 0P4

Vancouver

New York

Dear Sirs/Mesdames:

**Re: *Easy Loan Corporation et al v. Base Mortgage & Investments Ltd. et al*
Reasons for Decision of the Honourable Madam Justice Romaine, granted
November 30, 2018**

We were recently retained as counsel to BDO Canada Limited, in its position as Receiver of Base Mortgage & Investments Ltd. and Base Finance Ltd. in the above noted matter.

As you know, on November 30, 2018, the Honourable Madam Justice Romaine released her Reasons for Decision in the matter: (a) dismissing your application to vary the Court's earlier decision, granted December 2, 2016, pursuant to Rule 9.15 of the Alberta *Rules of Court*, Alta Reg 124/2010 (the "Rules"); and (b) providing that if the parties are unable to agree on costs, they may make short written submissions to the Court on this issue. We enclose Her Ladyship's Reasons for Decision for your reference.

In accordance with Rule 9.2 of the Rules, we have prepared the enclosed form of order detailing the Court's dismissal of your application and proposing costs in favour of the Respondents in the amount of \$2,000 each pursuant to Column 5 of Schedule C. The Respondents are of the view that the foregoing costs are reasonable as the value of the properties which your application requested be excluded from the scope of the Court's December 2, 2016 decision exceeds more than \$1.5 million.

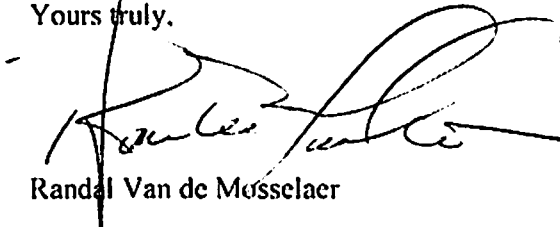
Please review the enclosed form of order and if you are in agreement that it accurately reflects Her Ladyship's decision, please sign on the relevant lines and return to my attention. We will then see to having the signed form of order submitted to Justice Romaine's office for her signature. If you have any comments or concerns regarding the form of order, please advise and we will do our best to address such comments or concerns, as appropriate.

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In the event we do not hear from you or we are unable to reach agreement on the form of order, we have booked 1.5 hours before Justice Romaine on January 23, 2019 at 11:00 a.m. to, among other things, speak to this form of order and have same signed. We will be providing you with formal notice of that application in due course.

We look forward to hearing from you.

Yours truly,

A handwritten signature in black ink, appearing to read "Randal Van de Mosselaer", is written over a horizontal line. The signature is fluid and cursive.

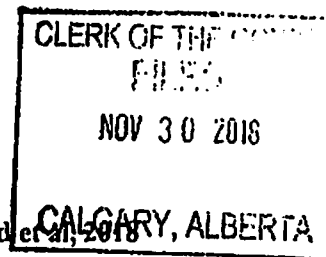
Randal Van de Mosselaer

RV:ep

Enclosure (2)

cc: Client
Christopher Souster, *Riverside Law*
Emily Paplawski, *Osler Hoskin & Harcourt LLP*

Court of Queen's Bench of Alberta



Citation: Easy Loan Corporation et al v Base Mortgage & Investments Ltd et al, 2018 ABQB 979

**Date: 20181130
Docket: 1501 11817
Registry: Calgary**

Between:

Easy Loan Corporation and Mike Terrigno

Plaintiffs

- and -

Base Mortgage & Investments Ltd., Base Finance Ltd., Arnold Breitkruetz, Susan Breitkruetz, Susan Way and GP Energy Inc.

Defendants

**Reasons for Decision
of the
Honourable Madam Justice B.E. Romaine**

I. Introduction

[1] Arnold and Susan Breitkruetz, two of the defendants in the receivership of Base Mortgage & Investments Ltd. and Base Finance Ltd., Arnold Breitkruetz, Susan Breitkruetz, Susan Way and GP Energy Inc. (the "debtors") apply pursuant to Rule 9.15 of the *Alberta Rules of Court* to vary a decision issued by this Court on December 2, 2016 (the Decision), which is currently under appeal.

[2] Rule 9.15 (4)(a) and (c) allows the Court to set aside, vary or discharge an interlocutory order either because information arose or was discovered after the order was made or on any other grounds that the Court considers just. Rule 9.15 (4)(b) is not applicable in this case.

[3] With respect to whether information has arisen or was discovered after the Decision:

a) all of the evidence adduced by Mr. Breitkreutz in the application has been in existence in the books and records of the debtors seized by the Receiver since the receivership proceedings began. I am satisfied by the evidence submitted by the Receiver that Mr. Breitkreutz's affidavit setting out what he characterizes as new evidence was available to him before the application that led to the Decision was heard;

b) even if there was new admissible evidence introduced by Mr. Breitkreutz's affidavit, which is not the case, that new evidence would not change the Decision; and

c) the summaries of the "new evidence" prepared by Mr. Breitkreutz and Ms. Way are not supportable when compared to the books and records in the possession of the Receiver, and are thus not credible.

[4] However, it appears that Mr. Breitkreutz does not rely on this ground in any event. In his affidavit of June 20, 2017, he states that:

I do not consider any of the information set out herein to be "new evidence", as the records were in the possession of the Receiver throughout these proceedings. In reality, this is my first opportunity since these proceedings against me and my companies began in October 2015 to set out the below information with proper documentary support.

[5] He submits that the counsel who represented him in the application that led to the Decision was not "able to properly explain the history of [the debtor companies] to the Court", and criticizes his counsel for not "securing" for him copies of records seized by the Receiver. If there is any foundation to this complaint, the remedy does not lie with Rule 9.15.

[6] I have reviewed the other grounds on which Mr. Breitkreutz relies and find that there is no reason to set aside or vary the Decision.

II. Analysis

A. New Information

[7] As noted previously, Mr. Breitkreutz concedes that the information he adduced at the application was not "new evidence". However, the Receiver presented persuasive evidence in its Supplemental Report to the Sixth Report dated March 12, 2018 that all the information used to produce the evidence set out in Mr. Breitkreutz's affidavit came from records in the possession of the Receiver that Mr. Breitkreutz was able to access before the hearing that led to the Decision. I am also persuaded by the Receiver's detailed reconciliation of the information provided in Mr. Breitkreutz's affidavit that there are substantial discrepancies between the source documentation in the possession of the Receiver and Mr. Breitkreutz's claims in the affidavit and the spreadsheets prepared by Ms. Way. It is unnecessary for the purpose of this decision to give details of such discrepancies, as the information was in any event discoverable before the hearing. Thus, Rule 9.15 (4)(a) does not entitle Mr. Breitkreutz to a reconsideration.

[8] Mr. Breitkreutz's submission that he was unable to access records held by the Receiver is disingenuous. It is clear from the evidence that Mr. Breitkreutz and Ms. Way attended at the

Receiver's offices to review documents on April 5, July 13 and 14, 2016, prior to the August 17, 2016 hearing. All of these reviews took place while Mr. Breitkreutz was represented by his previous counsel, who did not attend any of these document reviews. There is no credible evidence that the Receiver prevented Mr. Breitkreutz from reviewing the records.

B. Other Grounds to Reopen the Decision

[9] Mr. Breitkreutz submits that the Court may exercise its discretion to re-open a decision on the basis that, on its own reconsideration of the record, the original decision was in error because it overlooked or misconstrued material evidence or misapplied the law. He relies on a British Columbia case that is distinguishable because it involved an order that had not yet been entered: *Sykes v Sykes* (1995) 6 BCLR (3d) (Canlii). In this case, I am clearly functus unless the grounds set out in Rule 9.15 (a) and (c) mandate relief for Mr. Breitkreutz.

[10] Mr. Breitkreutz submits that the Decision was "an overreach", and that the inquiry made by the Receiver was insufficient. The issue of whether the Decision was an overreach or whether the Court overlooked or misconstrued material evidence or misapplied the law is an issue for the Court of Appeal, and I will not address it further.

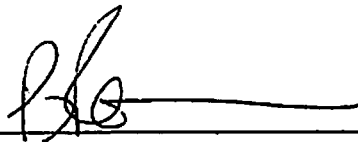
[11] With respect to the Receiver's inquiries and analysis, it is clear from the Receiver's reports and its submissions at the hearing that the Receiver has made thorough inquiries into a problematic estate that was hampered by poor record keeping and Mr. Breitkreutz's failure to cooperate. The assumption that funds were withdrawn from the Base Finance account for the personal benefit of the individual debtors was a valid and reasonable inference from the limited evidence available to the Receiver, and the lack of persuasive or credible evidence to the contrary.

[12] Mr. Breitkreutz complains that the Receiver did not make efforts to determine the authenticity and validity of certain "deeds of trust" relating to property in Texas. This submission was made at the hearing that led to the Decision and, as noted in the Decision, the Receiver gave credible and reasonable reasons why such an investigation would not have been to the benefit of the estate.

III. Conclusion

[13] The application is dismissed. If the parties are unable to agree on costs, they may make short written submissions to this Court on that issue.

Dated at the City of Calgary, Alberta this 30th day of November, 2018.



B.E. Romaine
J.C.Q.B.A.

Appearances:

**Christopher Souster
for Easy Loan**

**Robert Calvert, Q.C. and Trevor Gair
for the Arnold and Susan Breikreutz**

**Richard Billington Q.C., Steven Krouger and Richard Hayles
for the Receiver**

COURT FILE NUMBER 1501 11817

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF EASY LOAN CORPORATION and MIKE TERRIGNO

DEFENDANTS BASE MORTGAGE & INVESTMENTS LTD., BASE FINANCE LTD., ARNOLD BREITKRUEZ, SUSAN BREITKRUEZ, SUSAN WAY and GP ENERGY INC.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Randal Van de Mosselaer / Emily Paplawski
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File No.: 1191705

DATE ON WHICH ORDER WAS PRONOUNCED: November 30, 2018

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice B.E. Romaine

LOCATION OF HEARING: Calgary Courts Centre
601 – 5th Street SW
Calgary, AB

UPON THE APPLICATION OF Arnold and Susan Breitkruetz (the "Applicants") for an order pursuant to Rule 9.15 of the Alberta *Rules of Court*, Alta Reg 124/2010 (the "*Rules*") to vary a decision issued by this Court on December 2, 2016 in the within matter (the "Application"); **AND UPON** noting that BDO Canada Ltd. was appointed Receiver (the "Receiver"), without security, of all the current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, of Base Mortgage & Investments Ltd. and Base Finance Ltd. pursuant to the Order of the Honourable Mr. Justice Yamauchi, granted October 15, 2015, as amended; **AND UPON** reviewing the Affidavits of Arnold Breitkruetz, sworn July 28, 2016 and June 20, 2017 and the Affidavit of Mike Terrigno, sworn May 11, 2017; **AND UPON** reviewing the Third Report of the Receiver, dated May 9, 2016, the Supplementary Report to the Third Report

of the Receiver, dated July 28, 2016, the Sixth Report of the Receiver, dated August 22, 2017 and the Supplementary Report to the Sixth Report of the Receiver, dated March 12, 2018; **AND UPON** hearing from counsel for Easy Loan Corporation ("**Easy Loan**"), the Applicants and the Receiver; **IT HEREBY ORDERED AND DECLARED THAT:**

1. The Application is dismissed.
2. The Applicants shall pay costs to each of Easy Loan and the Receiver in the amount of \$2,000 in accordance with Column 5 of Schedule C of the *Rules*.

J.C.Q.B.A.

APPROVED AS ORDER MADE:

RIVERSIDE LAW

Christopher M. Souster

Counsel for Easy Loan

Arnold Breitkruetz

Applicant

Susan Breitkruetz

Applicant