

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Canadian Solar Solutions Inc

Plaintiff(s)

AND

RA SOLAR LEASING INC

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
Brian Maus + Simon Maus for Helix Finance Inc, and RA Solar Leasing Inc.		
Uyen Dake for the receiver BDO Canada Limited		
Scott McQuinn for the applicant		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

January 29, 2015

Helix Finance Inc moves for an order granting it leave to commence an action against the receiver BDO. Section 215 of the BIA requires leave. Protest for granting leave was dealt with in Mancini (Trustee of) v. Falconi (1993), 61 O.A.C. 332 and confirmed in GMAC Commercial Credit Corp. Canada v. T.C.T. Logistics Inc. [2006] 2 S.C.R. 123.

Date

Judge's Signature

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Judges Endorsment Continued

especially, <sup>paras 131 to 140 and</sup> paras 131 to 140. What is particularly apt in this case is the statement of <sup>Deane</sup> ~~Justice~~ J. in paragraph 140 -

"Mancini thus makes it clear that the judge to whom an application is made under s. 215 cannot accept vague allegations. The allegations must be supported by the evidence"

The factual basis for the relief sought shifted somewhat from the argument put forward in the material of Helione.

In their material they as said they would be seeking an accounting from BDO of the approximate \$300,000 BDO received from the Helione projects and damages for conversion of Helione's 27 projects, diminished cash flow and inability to use their 27 projects as securities when dealing with their bank.

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## Judges Endorsment Continued

During argument, Mr. Morris said that Helione learned that money had gone to a company named Solar Pure Energies Inc ("Pure") from the debt to KA Solar that should have been paid by KA Solar to Helione. He said Helione wanted to claim payment from Pure but was met with a release that Helione had given to Pure on an unrelated transaction on May 23, 2014. He said Helione would have never signed the release had it known that Pure had money properly owing to Helione, and that BDO must have known that Pure had this money and failed to disclose that information to Helione.

There is simply no evidence that BDO knew that Pure owed money to Helione. BDO was the receiver of KA Solar for these solar projects financed by CSSI, not for

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Judges Endorsment Continued

A plan project of RA Sles financed by Helione.  
 It is quite clear that due to poor records  
 of RA Sles and the recollections of  
 Mr. Marshall of RA Sles to co-speak, ~~that~~ BDO  
 had great difficulty in ~~set~~ separating all  
 funds <sup>received from</sup> belonging to C.S.S.I. and funds  
 received from or belonging to Helione. An  
 accountant was retained to investigate. Eventually  
 Helione became concerned that the information  
 was not forthcoming and it retained the  
 same accountant who delivered a  
 supplementary partial reconciliation on  
 March 14, 2014. BDO and Helione  
 received that reconciliation, as did both  
 regarding earlier reports from the accountant.  
 There is absolutely no evidence that BDO  
 knew any more than Helione did regarding  
 the accounts of RA Sles.

Helione relies on a letter from John P.  
 Marver, Director of Legal Services of C.S.S.I.

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## Judges Endorsment Continued

dated January 5, 2015 to Helione, RA Sler, Pure and two other companies that Helione did business with. He advised that Helione had advised it intended to sue BDO for ~~the~~ alleged mismanagement of funds.

He set out his ~~understanding~~ view of the circumstances. One statement was that funds from some or all of the Helione projects were "at one time" being paid to Pure (and some may be still) and were not paid by Pure to RA Sler.

Mr. Morris said ~~never infer~~ that this information led to have cause for BDO. There is no basis for me to infer that. Mr. Morris Jr. during argument said that they had no information or knowledge as to what BDO knew about money owing by Pure to Helione, although he later tried to recall from that.

I asked Mr. Morris if he had made an enquiry of BDO as to its knowledge of this issue. This is

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The normal way for information to be sought from the receiver as a court officer. He said that no such request had been made. The receiver's representative was in court and advised the court that BDO <sup>had</sup> no knowledge of any funds being held by Pure that belonged to Helione.

When Helione signed a release on favour of Pure it knew there were accounting issues. It ~~and chose~~ to sign the release. In his affidavit Mr. Pochtanek acknowledged that the accountant issues retained by BDO and that Helione was only able to determine the status of the Helione projects and complete that work in late 2014. While he said he did not know revenue from any Helione projects had been misdirected to Pure when he signed the release, he did not state he would not have signed the release had he known. He also stated a belief the release did not cover

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The Helene projects.

In the result, there is simply no evidence that BDO knew something about Pure's responsibilities to Helene at the time that Helene signed a release in favour of Pure.

No evidence does not disclose a proper factual foundation to support the allegation regarding Pure, ie it does not ~~discuss~~ establish a factual basis for the proposed claim.

The motion is dismissed. BDO is entitled to its costs, as is CSSI. If the costs cannot be agreed, brief written submissions may be made within 10 days, along with a proposed cost outline, and brief written reply submissions may be made within a further 10 days.

L. J. West J.