

Court File No. CV-21-00672880-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE PATTILLO

)
)
)

TUESDAY, THE 7th
DAY OF DECEMBER, 2021

B E T W E E N:



BAO YING CAO and 13364097 CANADA INC.

Applicants

and

XIAODONG YANG and USERS OF SUNRISE TECHNOLOGY

Respondents

INTERPLEADER ORDER

ON READING the materials filed in support of this application, on hearing the submissions of the applicants, on hearing the submissions, if any, of those respondents attending the hearing, and on reading the consent of BDO Canada Limited to act as Receiver;

Service

1. THIS COURT ORDERS that the time for service of the notice of application, application factum and application record is abridged and service is validated so that this application is properly returnable on the hearing date;

Declarations as to interpleader

2. THIS COURT DECLARES that a conflict exists among the respondents regarding their claims to net funds paid (the “Contested Funds”) as part of a scheme (the “Sunrise Technology Scheme”) operated by the respondent Xiaodong Yang, some of which are currently held by 13364097 Canada Inc. and Bao Ying Cao;

3. THIS COURT DECLARES that the applicants 13364097 Canada Inc. and Bao Ying Cao have no beneficial claim to the Contested Funds, having come into possession of certain Contested Funds as a result of the Sunrise Technology Scheme;

Appointment of receiver and transfer of Contested Funds held by 13364097 Canada Inc.

4. THIS COURT ORDERS that pursuant to s. 101 of the *Courts of Justice Act* and Rule 41.03 of the *Rules of Civil Procedure*, BDO Canada Limited is appointed receiver (“**Receiver**”), without security, of the Contested Funds held by the applicant 13364097 Canada Inc., and in particular the Contested Funds it holds in the CIBC Business Chequing account no. 90-39112 (Branch Transit Number 02242) and the CIBC Business Savings account 90-39317 (Branch Transit Number 02242);

5. THIS COURT ORDERS that 13364097 Canada Inc. transfer the Contested Funds it holds to the Receiver, and take whatever actions are necessary to permit the Receiver to access, control and disburse the Contested Funds held by 13364097 Canada Inc., pursuant to Rules 43.04(1)(a) and 43.04(2)(g);

Appointment of receiver and identification of Contested Funds held by Bao Ying Cao

6. THIS COURT ORDERS that pursuant to s. 101 of the *Courts of Justice Act* and Rule 41.03 of the *Rules of Civil Procedure*, BDO Canada Limited is hereby appointed Receiver,

without security, over the Contested Funds held by the applicant Bao Ying Cao, and in particular the Contested Funds she holds in the following accounts:

- a) Scotiabank account no. 28472-03879-83 (the “Scotiabank Account”);
- b) CIBC account no. 83-72195 (Transit No. 02242) (the “CIBC Account”);
- c) HSBC account no. 332-135217-152 (the “HSBC Chequing Account”)
- d) HSBC account no. 332-135217-203 (the “HSBC Savings Account”);
- e) EQ Bank account no. 107-237-917 (the “EQ Account”);
- f) Wise account no. 200110136648 (Transit No. 16001) (the “Wise Account”);
- g) The PayPal account associated with the email address "ivycao23@hotmail.com";
and
- h) The PayPal account associated with the email address
Baoyingcao1987@outlook.com (collectively the “PayPal Accounts”)

7. THIS COURT ORDERS that, Bao Ying Cao shall transfer the contents of the accounts she holds that contain exclusively Contested Funds, namely, the CIBC Account, the HSBC Savings Account, the EQ Account, the Wise Account, and both PayPal Accounts listed above, to the Receiver, and take whatever actions are necessary to permit the Receiver to access, control and disburse the Contested Funds held by Bao Ying Cao., pursuant to Rules 43.04(1)(a) and 43.04(2)(g);

8. THIS COURT ORDERS that the Receiver take all reasonable steps to identify the Contested Funds held by Bao Ying Cao and/or 13364097 Canada Inc., among the funds in the remaining accounts listed in paragraph 6, namely, the Scotiabank Account and the HSBC Chequing Account, both of which may contain intermingled personal funds and Contested Funds. For clarity, in identifying the Contested Funds held by Bao Ying Cao and/or 13364097 Canada Inc., the Receiver shall deem any funds used directly or indirectly to facilitate the Sunrise Technology Scheme, including funds transferred directly or indirectly to the respondent Xiaodong Yang, to be Contested Funds;

9. THIS COURT ORDERS that Bao Ying Cao is authorized to continue to use her Scotiabank Account and her HSBC Chequing Account with respect to what she believes to be her personal funds, while the Receiver is in the process of identifying the Contested Funds held in those accounts;

10. THIS COURT ORDERS that Bao Ying Cao provide all necessary assistance, including access to banking information, statements, financial information and other documents, to permit the Receiver to identify the Contested Funds held by her.

11. THIS COURT ORDERS that Bao Ying Cao transfer to the Receiver all Contested Funds identified by the Receiver as being held by her and/or 13364097 Canada Inc., and take whatever actions are necessary to permit the Receiver to access, control and disburse the Contested Funds, pursuant to Rules 43.04(1)(a) and 43.04(2)(g);

Transfer of Contested Funds to the Receiver

12. THIS COURT ORDERS that any financial institution holding an account that the Receiver has identified as containing Contested Funds shall, upon presentation of this Order, cooperate in transferring those Contested Funds to the Receiver;

13. THIS COURT ORDERS that if any financial records the Receiver requires to carry out its obligations under this Order are stored or otherwise contained on a computer or other electronic system of information storage controlled by one of the applicants, the applicant in possession or control of such records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, the applicants shall provide the Receiver with all such assistance in gaining immediate access to the information in the records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information;

14. THIS COURT ORDERS that the Contested Funds collected by the Receiver under this Order shall be deposited into one or more new accounts to be opened by the Receiver (the "Receivership Accounts") and the monies standing to the credit of such Receivership Accounts

from time to time, net of any disbursements permitted by this Order, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court;

Powers of receiver

15. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Contested Funds and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Contested Funds and any and all proceeds, receipts and disbursements arising out of or from the Contested Funds;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (c) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Contested Funds, whether in the Receiver's name or in the name and on behalf of the applicants, for any purpose pursuant to this Order;
- (d) to report to, meet with and discuss with the respondents as the Receiver deems appropriate on all matters relating to the Contested Funds and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(e) to obtain statements in an electronic format, and any additional information or documentation the Receiver may require, related to any account reasonably suspected of holding Contested Funds upon presentation of this Order to the institution at which such account is located;

(f) to initiate, prosecute, and continue the prosecution of proceedings in respect of the Contested Funds, and to settle or compromise any such proceedings. The authority conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding; and

(g) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

Payment from the Contested Funds

16. THIS COURT ORDERS that the Receiver and legal counsel to the Receiver shall be paid their reasonable fees and disbursements, including any disbursements incurred by the Receiver in respect of paragraph 14(b) above, out of the Contested Funds in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, pursuant to Rule 43.04(2)(g);

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver are granted a charge (the "Receiver's Charge") over the Contested Funds currently in the possession of the applicants, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Contested Funds in priority to all security interests, trusts, liens, charges and encumbrances,

statutory or otherwise, in favour of any person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*;

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice;

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Contested Funds it holds, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court;

20. THIS COURT ORDERS that the applicants' reasonable legal costs in bringing this application of \$35,000 shall be paid out of the Contested Funds, pursuant to Rule 43.04(1)(c);

Limitations on liability

21. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver in its capacity as receiver except with the written consent of the Receiver or with leave of this Court;

22. THIS COURT ORDERS that no Proceedings shall be commenced or continued against the applicants in respect of the Contested Funds, except with the written consent of the Receiver or with leave of this Court, and any such proceedings currently under way shall be stayed and suspended pending further Order of this Court;

23. THIS COURT ORDERS that all rights and remedies against the Receiver in its capacity as receiver and against the applicants with respect to the Contested Funds are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*;

24. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part;

25. THIS COURT ORDERS that upon compliance with the Order of this Court, the liability of the applicants in respect of the Contested Funds is extinguished, and in particular, the applicants shall not be liable for the portion of the Contested Funds taken as payment by the Receiver, or by the applicants for their reasonable legal fees, pursuant to Rule 43.04(1)(b);

Service and notice

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: ‘<https://www.bdo.ca/en-ca/extranets/sunrise-claims/>’;

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the claimants or other interested parties at their respective addresses, email addresses, or where no other means of communication is possible, messaging application, including WhatsApp, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing;

General

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order;

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order; and

30. THIS COURT ORDERS that the Receiver is authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in blue ink, appearing to read "A. K. J.", is written above a horizontal line.

(Signature of Judge)

Applicants

Xiaodong Yang
Users of Sunrise Technology

-and-

XIAODONG YANG et al.
Respondents

Court File No. CV-21-00672880-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

INTERPLEADER ORDER

POLLEY FAITH LLP
TD North Tower
77 King St. W., Suite 2110
Toronto ON M5K 2A1

Andrew Faith (47795H)
afaith@polleyfaith.com

Diane Shnier (77811N)
dshnier@polleyfaith.com

Tel: 416.365.1600

Lawyers for the applicants