

Court File Number: CV-17-11773-0000

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Bridging Finance Inc. Plaintiff(s)
AND
Thomas Canning et al Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See counsel slip		

- ☐ 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): _____

Wm Thomas brings his motion seeking
leave and an order that the
Receiver pay the reasonable fees and
disbursements of ~~the~~ counsel for
Thomas Canning - Blaney McMurtry.
For the reasons below I grant
the relief sought.
First, with respect to the issue of
leave Bridging and Thomas Canning
1 Dec 17
McE

Date

Judge's Signature

☒ Additional Pages 5

1. From the Reserve

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

entered into an Accommodation Agreement wherein Bridging agreed to pay Blaney's reasonable fees and disbs.

The Agreement is dated Apr 29/17.

Thereafter pursuant to two orders of Justice Conway dated June 21/17 there was an asset sale and Richter was appointed Receiver. In the Receiver Appointment Order the issue of Blaney's fees was referred to another time to "be subject to further order of this Court".

In these circumstances leave ought to be granted. There was an agreement and the above order set out a process to deal with the issue. Thomas Conway does still exist and the issue ought to be determined. In my view this is just and equitable.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Secondly subject to reasonableness, the fees ought to be funded as per the Agreement.

I do not accept the arguments raised by Bridgman in his regard. There was no termination of the Agreement. Although there were many allegations between counsel, the two campaigns carried on under the Agreement.

I also do not accept that the claim for fees is simply an unsecured claim. It stems from an express agreement between Bridgman and Thomas Panning which has been referenced in Justice Conner's order. In my view, the order also defeats Bridgman's assertion that the claim can no longer be pursued given the Approval & vesting.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

order. It was expressly contemplated that the issue would be dealt with at a later time.

I further do not accept that Bridgman can assert a claim for set off in the rather unique circumstances of how this matter proceeded given the previous orders and the Agreement. It makes no sense that the deal to fund legal fees/dists would be subject to competing claims by Bridgman against Thomas Canning - this would render the ~~Agreement~~ deal to pay fees/dists meaningless. The same is true for Bridgman's other, ^{similar,} arguments under the general security agreement.

Overall, the relationship between Thomas Canning and the Receiver

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

and Bridging has been a fraction
are.

Bridging makes allegation of a
number of breaches, failures to
disclose information (before and after
the Agreement) and, recently, learned
of, diversion of funds.

With respect to the recent information
obtained through Western Union there
is contradictory affidavit evidence
filed by Mr Canning. Generally,
Bridging knew of the earlier
alleged events in and around the
time the Agreement was entered
into.

Overall, the record before me does
not establish breaches that would
defeat the obligation in the
Agreement to pay reasonable fees &
disbursements.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

In my view, the issues surrounding conduct go to the issue of reasonableness.

These issues involve, amongst other things, candour and co-operation. Bridgman is also only obligated to pay those fees/desbs as set out in the Agreement.

It may well be that some or most are not recoverable but that is far another day if the parties cannot resolve the issue.

Based on the above leave ought to be granted and the issue resolved on the basis of the reasonableness of the fees/desbs. This is what was contemplated clearly in the Agreement.

McE