

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(COMMERCIAL LIST)

BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND L.P.

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1)
OF THE *BANKRUPTCY ACT AND INSOLVENCY ACT* R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, c. C.43, AS AMENDED

**RESPONDING MOTION RECORD OF
THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

(Returnable January 11, 2018)

January 4, 2018

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSUC #42357I)
Fax: (416) 594-2437
Email: dullmann@blaney.com

Alexandra Teodorescu (LSUC # 63889D)
Tel: (416) 596-4279
Email: ateodorescu@blaney.com

Lawyers for Thomas Canning (Maidstone) Limited. and
692194 Ontario Limited, Respondents

TO: Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(COMMERCIAL LIST)

BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND L.P.

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1)
OF THE *BANKRUPTCY ACT AND INSOLVENCY ACT* R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, c. C.43, AS AMENDED

INDEX

TAB	DOCUMENT(S)
1	Affidavit of Ariyana Botejue, sworn January 4, 2018
A	Exhibit A - Correspondence between Ms. Teodorescu and Mr. Rappos, dated December 29

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND L.P.**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1)
AND 243 (1) OF THE *BANKRUPTCY ACT AND INSOLVENCY ACT* R.S.C. 1985, c. B-
3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, c. C. 43, AS AMENDED**

**AFFIDAVIT OF ARIYANA BOTEJUE
(Motion Returnable January 11, 2018)**

I, **ARIYANA BOTEJUE**, of the City of Toronto, in the Province of Ontario, **MAKE**

OATH AND SAY:


1. I am an assistant at Blaney McMurtry LLP ("**Blaney**"), counsel for Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (collectively, the "**Respondents**") in the within proceeding, and as such I have personal knowledge of the matters deposed in my affidavit, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true.
2. I swear this affidavit in response to a motion for advice and directions brought by Richter Advisory Group Inc. ("**Richter**"), in its capacity as Court-appointed receiver of the property, assets and undertakings of the Respondents.

3. On December 29, 2017, Alexandra Teodorescu, a lawyer at Blaney, wrote to Mr. Sam Rappos, counsel for Richter, proposing a series of threshold questions to be answered by Richter. Attached hereto and marked as **Exhibit "A"** to this affidavit is a copy of Ms. Teodorescu's letter, dated December 29th, and Mr. Rappos' response of the same date. The e-mail from Mr. Rappos has been partially redacted as it contains "without prejudice" discussions.

4. I am swearing this affidavit in response to the motion for advice and directions brought by Richter, and for no improper purpose.

SWORN BEFORE ME

at the City of Toronto,
in the Province of Ontario,
on January 4, 2018

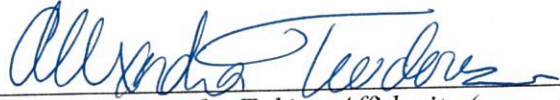


A Commissioner for Taking Affidavits
Alexandra Teodorescu

)
)
)
)
)
)
)


ARIYANA BOTEJUE

This is Exhibit "A" referred to in the Affidavit of Ariyana Botejue
sworn the 4th of January, 2018.

A handwritten signature in blue ink, reading "Alexandra Teodorescu". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

Alexandra Teodorescu

D: 416-596-4279 F: 416-594-2506
ateodorescu@blaney.com

December 29, 2017

Via Email

Mr. Sam P. Rappos
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Dear Mr. Rappos,

Re: Thomas Canning (Maidstone) Limited and 692194 Ontario Limited

As you are aware, we provided the Monitor/Receiver with a series of questions on September 22, 2017, which your client has refused to answer. As such, your client has brought a motion returnable on January 11th to seek advice and directions in respect of same.

As you are also aware, our clients have proposed a global without prejudice settlement offer that they had hoped would resolve all disputes between the parties fully and finally, including the January 11th motion. Since we have received no response to our settlement offer and it appears that the upcoming motion on January 11th is proceeding, we write to see if we might simplify the issues for the benefit of the Court, or perhaps dispense with that motion entirely.

In our original letter of September 22nd we asked detailed questions of the Receiver/Monitor in accordance with a schedule established by the Honourable Mr. Justice Hainey and sought various productions. It was necessary to ask for a comprehensive list of questions given the pending motion date and the accelerated schedule we were then adhering to. As we are now on a more orderly litigation schedule, we are of the view that it makes sense to step back and try to ask certain threshold questions to assess next steps.

Accordingly, below we propose a series of threshold questions to be answered by the Monitor/Receiver:

1. What actions did the Monitor/Receiver take to preserve the business of Thomas Canning up to and including the close of the sale in case the deal could not close?
2. How did the Monitor satisfy itself that the chosen purchaser had the financial wherewithal and necessary skills and expertise to close the sale of the business and property?

- 2 -

3. How did the Monitor satisfy itself that the purchaser intended to operate the business as a going concern post-closing?
4. At any point did the Monitor/Receiver become aware that the purchaser was affiliated with Bridging and/or that in effect Bridging was bidding for the business? If so, when did the Monitor/Receiver become aware?
5. Assuming the Monitor was aware of the above affiliation, why did the Monitor or Receiver not consider it necessary to highlight this fact for the Court in any of its reports?
6. What steps did the Monitor/Receiver take, if any, to isolate Bridging from the sale process?
7. How did the Monitor ensure that Bridging was not providing confidential RISP information to the Purchaser (or any purchaser), especially, without limitation, at meetings held prior to the deadline for submitting offers and in the period between the submission of the initial offers being submitted and the final offer being chosen? As you are aware, the Thomases were excluded from those meetings in order to protect against these kinds of disclosures and had no such information during the bidding process.
8. Please provide the following productions requested in our September 22 questions: the executed final form of agreement of purchase and sale, the filed and signed monitor's/receiver's certificate, all closing documents including proof of payment from the transaction (including, without limitation, the assumption of debt agreement with Bridging), the agreement entered into with totes lessors by the Receiver and/or the purchaser allowing for the use of the totes by the purchaser, all correspondence with the purchaser and its counsel and/or the purchaser's lender, and the confidential appendices attached to the Monitor's Report, dated June 15, 2017.
9. What steps did the Receiver take to protect the totes from damage post-closing and to retrieve the totes from the various offsite locations?
10. What steps did the Receiver take to address the possible environmental issues related to the cessation of the business between June 21 and closing? What steps, if any, did the Receiver take to ensure the purchaser would address those issues post-closing?
11. Please advise as to any business arrangement entered into between the Receiver, the Monitor or Richter and the purchaser and/or Bridging and/or the purchaser's lender, and produce such agreements, if any.

Once we have had an opportunity to review the productions and the answers provided by your client to these threshold questions, we will be able to obtain instructions from our client as to whether or not additional information or further productions which would flow from our original questions is required. In the interim, if your client is amenable to producing this information by Jan 5th, our client would consent to a one month adjournment of the Monitor/Receiver's motion of January 11th.

- 3 -

We are reserving our client's rights to ask further questions of the Monitor/Receiver, and/or to examine any other party or relevant person with respect to this matter.

We look forward to hearing from you.

Yours very truly,

Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read "Alexandra Teodorescu". The signature is written in a cursive style with a large initial "A" and "T".

Alexandra Teodorescu

AT/at

Alexandra Teodorescu

From: Sam P. Rappos <samr@chaitons.com>
Sent: December 29, 2017 3:34 PM
To: Alexandra Teodorescu; David T. Ullmann
Cc: Clark Lonergan
Subject: Re: Thomas Canning

Alex/David,

[REDACTED]

With respect to the other contents of your letter, the reduced amount of questions does not change the threshold issue, which is whether any such questions are required to be answered given that the sale process was approved, there was only one offer on the table, and it closed for the noted purchase price. This, along with your reservation of rights to ask more questions, doesn't really get us anywhere.

We will preparing for the motion on January 11 contemporaneously with any ongoing settlement negotiations that may be going on. We will be serving a factum next week.

Regards,
 Sam

On Dec 29, 2017, at 2:53 PM, Alexandra Teodorescu <ATEodorescu@blaney.com> wrote:

Sam,

Please find my letter of today's date.

Regards,

<image001.png>

Alexandra Teodorescu
 Associate

ateodorescu@blaney.com

<image002.png> 416-596-4279 | <image003.png> 416-594-2506

<image004.png> Blaney.com

<image005.png> <image006.png> <image007.png> <image008.png>

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

<2017-12-29- Ltr to S Rappos.pdf>

**BRIDGING FINANCE INC., AS AGENT
FOR SPROTT BRIDGING INCOME FUND L.P.**
Applicant

**THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF
THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

(Returnable January 11, 2018)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSUC #423571)
Tel: (416) 594-2437
Email: dullmann@blaney.com

Alexandra Teodorescu (LSUC # 63889D)
Tel: (416) 596-4279
Email: ateodorescu@blaney.com

Lawyers for Thomas Canning (Maidstone) Limited. and 692194
Ontario Limited, Respondents