

2002 BCSECCOM 782

COR#02/100

Decision

Richard J. Watson

and

TSX Venture Exchange

Sections 28 and 165(5) of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Joyce C. Maykut, Q.C.	Vice Chair
	John K. Graf	Commissioner
	Robert J. Milbourne	Commissioner

Date of Hearing August 28, 2002

Date of Decision September 11, 2002

Appearing

Richard J. Watson For himself

Susan A. Griffin For TSX Venture Exchange
Sean K. Boyle

Michel Huot For Commission staff

Introduction

- ¶ 1 On July 17, 2002, Richard J. Watson applied for a hearing and review of a decision made on June 6, 2002 by the TSX Venture Exchange. At the same time he asked the Commission to stay the decision pending the hearing and review. This is our ruling on the stay application made under sections 28 and 165(5) of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On June 6, 2002, the Exchange notified Watson that it had determined that his “involvement with any listed company in any capacity is not acceptable”. We accepted counsel for the Exchange’s representation that the Exchange’s determination as to Watson’s unsuitability was restricted to his capacity to act as a director, officer or key employee of any Exchange listed company.

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- ¶ 3 Watson states that the Exchange's decision is unfair because it was made without a hearing and without the Exchange properly considering relevant information that was available to it.
- ¶ 4 Watson is seeking a stay of the Exchange's decision until matters in the Supreme Court of British Columbia, which he says concern him and three companies of which he was a director, are determined. Trial dates have been set in two of the cases for July and September 2003. Then, if necessary, Watson says a hearing can be held to determine the matter of his suitability as a director, officer or key employee.

Background

- ¶ 5 For several years, Watson was a director and officer of three companies whose securities were listed and traded on the Exchange. Two of the companies are still trading on the Exchange. Watson has not been a director, officer or key employee of any Exchange listed company since sometime in 2001.
- ¶ 6 Watson states his only involvement with these companies now is as a creditor and as a witness in proceedings in the Supreme Court of British Columbia. Watson agrees that he does not need to be a director, officer or key employee of these companies. Nonetheless, Watson argues that the Exchange's decision declaring him unsuitable will be used to hurt his credibility in this litigation.
- ¶ 7 In support of his application for a stay, Watson filed a letter from a shareholder of one of the companies. The shareholder expressed his concern that Watson was no longer on the board and, as a consequence, the company's capacity to recover funds, which the shareholder believed were wrongfully appropriated, has been curtailed. Watson argues that the balance of convenience should be weighted in favour of the shareholders who would like him to be back running that company.

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- ¶ 8 The Commission in *Re Quinto Mining Corporation and Paul Schiller* [1996] 42 BCSC Weekly Summary 4, reviewed the principles it would apply when considering an application for a stay of a decision under section 165(5) of the Act, pending a hearing and review of the decision by the Commission. The Commission stated in *Quinto*, at page 3, that it would consider the following tests in making its decision:

The first test, the "serious question" test, is a preliminary and tentative assessment of the merits of the case. The applicant seeking the stay must make out a prima facie case or show that there is a serious question to be tried as opposed to a frivolous or vexatious claim. The second test requires the applicant to establish that irreparable harm will be suffered if the stay

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is not granted. The third test, called the balance of convenience, is a determination of which of the two parties will suffer the greater harm from the grant or refusal of the stay pending a decision on the merits. When weighing the balance of convenience the Commission must take into account the public interest.

- ¶ 9 Before we grant a stay, Watson must meet the three tests described in *Quinto*. We find that Watson has failed to meet the second test of showing irreparable harm. Therefore, we find it unnecessary to deal with the first and third tests.
- ¶ 10 Watson is not currently, and agreed that he need not be, a director, officer or key employee of any Exchange listed company. However, Watson argued that it is necessary to grant a stay until the Supreme Court litigation is resolved in order to remove the cloud over his reputation that he perceives exists as a result of the Exchange's decision.
- ¶ 11 Watson's submission that his reputation or credibility will be undermined in the Supreme Court litigation because of the Exchange's decision is not evidence for the purposes of establishing irreparable harm. It is simply supposition that the Court will be influenced by the decision of the Exchange. Furthermore, the letter from a shareholder of one of the Exchange listed companies seeking Watson's return to the board, and Watson's support for the shareholder's position, is clearly at odds with Watson's submissions that he does not need to be a director, officer or key employee.
- ¶ 12 However, Watson is not a director, officer or key employee. Considering these circumstances, we find that Watson has not shown that he will suffer irreparable harm if the stay is not granted and accordingly, we deny the application.
- ¶ 13 Finally, we note that there is ample time to proceed with a hearing and review of the Exchange's decision before the Supreme Court trial is scheduled to begin in July 2003. We will set a date for the hearing and review after Watson files his statement of points.

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¶ 14 **For the Commission**

Joyce C. Maykut, Q.C.

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