

2012 BCSECCOM 238

Rashida Samji, Arvindbhai Bakorbhai Patel (aka Arvin Patel) and Samji & Assoc. Holdings Inc.

Securities Act, RSBC 1996, c. 418

Application

Panel	Brent W. Aitken David J. Smith Shelley C. Williams	Vice Chair Commissioner Commissioner
Hearing	June 12, 2012	
Date of ruling	June 19, 2012	
Appearing		
Sean K. Boyle	For Arvin Patel	
Kristine Mactaggart Wright Joyce Johner	For the Executive Director	
Kieran E. Siddall	For MNP Ltd.	
Preston Parsons	For Samji investors	

Ruling

I Introduction

- ¶ 1 On January 31, 2012 the Chair of the Commission issued an investigation order under section 142(1) of the *Securities Act*, RSBC 1996, c. 418 based on suspicion of an illegal distribution by Rashida Samji, Samji & Assoc. Holdings Inc. and Arvindbhai Bakorbhai Patel.
- ¶ 2 On the same day, the Commission Chair made an order under section 151(2) of the Act freezing five accounts at four financial institutions. One of the accounts was Patel's – an account at a branch of Coast Capital Savings.
- ¶ 3 On February 2, 2012, the Commission Chair gave notices under section 151(5) to the Land Titles Office for registration against the titles of five condominium properties that Patel owns, either solely or jointly with his son.

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- ¶ 4 On February 14, 2012, Patel applied under section 171 to have the freeze order and the section 151(5) notices revoked, or alternatively, the freeze order varied to allow Patel access to the Coast Capital account to pay his living expenses and to retain counsel. At the hearing of the application, the executive director produced evidence that Patel had two retirement accounts at Coast Capital and a brokerage account at Mackie Research Capital Corporation.
- ¶ 5 On February 20, 2012, we made orders revoking the freeze order made by the Commission Chair against the Coast Capital account and issued new freeze orders against Patel's Coast Capital retirement accounts and his brokerage account at Mackie. We revoked the Coast Capital account so that Patel could use the funds in the account to pay his living expenses and to pay legal fees to defend himself against allegations related to the Samji investment scheme.
- ¶ 6 On April 5, 2012, the executive director issued a notice of hearing alleging a fraudulent investment scheme perpetrated by Samji personally and through related corporations.
- ¶ 7 On April 3, 2012, Patel and the executive director entered into a settlement agreement in which Patel admitted that he made an illegal distribution, made misrepresentations and, by recommending that his clients invest in Samji's investment scheme, engaged in conduct contrary to the public interest. Patel has also transferred to the receiver appointed under section 152 of the Act, MNP Ltd., his legal and beneficial interest in the five properties subject to the section 151(1)(5) notices.
- ¶ 8 Patel has now spent the money in the Coast Capital account and seeks the revocation of our February 20 freeze orders against his Coast Capital retirement accounts and his Mackie brokerage account.
- ¶ 9 At the hearing on June 12 we heard submissions from the executive director, from Patel, from MNP Ltd., and from counsel seeking to have a class action certified on behalf of the investors in the investment scheme alleged in the Samji notice of hearing.
- ¶ 10 On June 13, 2012, Patel sought to enter additional evidence in the form of an affidavit relating to the source of the assets in the Mackie brokerage account. This did not come to the panel's attention until today. We considered the affidavit but, in light of our disposition of the matter, it is not relevant.

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II Issues

- ¶ 11 Patel argued that the February freeze orders should be revoked because:
- despite our decision about the application of *Ontario Securities Commission v RBC Dominion Securities Inc.*, 2001 Canlii 27979 and *Ontario Securities Commission v Sextant Capital Management Inc.*, 2010 ONCA 228, to freeze orders made by this Commission, that authority ought still apply to the continuation of a freeze order;
 - the freeze orders relating to Patel’s registered retirement accounts are without jurisdiction because of section 71.3 of the *Court Order Enforcement Act*, RSBC 1996, c. 78; and
 - Patel needs the funds in the frozen accounts to pay his living expenses and to pay legal fees to defend himself against civil and criminal allegations related to his involvement in the Samji investment scheme.
- ¶ 12 The executive director says that it is premature to revoke or vary the freeze orders and that the *Court Order Enforcement Act* does not apply to freeze orders under the Act.
- ¶ 13 The receiver says it is premature to revoke or vary the freeze order because the receiver has not completed its forensic analysis to determine whether funds from the Samji investment scheme could be traced into Patel’s accounts, or whether funds in Patel’s accounts could be subject to claims based on constructive trust. It says either of those would override the provisions of the *Court Order Enforcement Act*. The receiver suggests that we leave the freeze order in place for 30 days, when the parties would appear before us to report on progress.
- ¶ 14 Counsel for the investors’ class action says it is premature to revoke the freeze orders, but says if we are inclined to do so, we should make the revocation effective 21 days hence to give him time to certify the class action and apply for a *Mareva* injunction to protect the claims of investors.

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III Analysis

- ¶ 15 Patel would consent to delaying the revocation of the freeze order for 21 days as suggested by counsel for the investors' class action. He says all he wants is his day in court. In these circumstances, we need not deal with his argument that the Ontario jurisprudence should apply to the continuation of a freeze order, except to say we disagree.
- ¶ 16 The other parties also want the court to decide on the disposition of the assets in the Patel accounts.
- ¶ 17 We agree. The purpose of a freeze order is only to preserve assets for potential claims, be they regulatory or civil. It is for the court to resolve the matter of how any assets subject to the freeze order ought to be distributed and to instruct the receiver as to the management of the assets in the meantime.
- ¶ 18 It is also for the court to determine, in due course when it has the evidence, whether the receiver has established any claims on the assets in Patel's accounts through tracing or constructive trust and, if so, the application of the *Court Order Enforcement Act* to Patel's retirement accounts in those circumstances.
- ¶ 19 However, keeping the freeze order in place does not interfere with the parties' seeking the necessary court orders to deal with the matter and we encourage them to do so expeditiously. The freeze order will preserve the *status quo* until the court deals with the matters before it.
- ¶ 20 That said, we accept that Patel is entitled to some funds to defend himself against civil and criminal charges, and to pay his living expenses.
- ¶ 21 We are therefore revoking the freeze order as it applies to the Mackie Research Capital account.
- ¶ 22 This ruling does not foreclose Patel from seeking a future variation or revocation in the future

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IV Order

¶ 23 We order that the freeze order we issued on February 20, 2012 is varied by deleting paragraph 2(b) and by deleting the reference to paragraph 2(b) from paragraph 2(c).

¶ 24 June 19, 2012

¶ 25 **For the Commission**

Brent W. Aitken
Vice Chair

David J. Smith
Commissioner

Shelley C. Williams
Commissioner