

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act*, RSBC 1996, c. 418

Citation: Re Tan, 2016 BCSECCOM 138

Date: 20160429

Virginia Tan, Patrick Eng Tien Tan, Marcus Soon-Keen Tan,  
Michael Joseph Donelson, 0994439 B.C. Ltd., Letan Investments Management  
and TLD Investments Inc.

<b>Panel</b>	Nigel P. Cave	Vice Chair
	Judith Downes	Commissioner
	Don Rowlatt	Commissioner

**Hearing date** April 14, 2016

**Submissions Completed** April 14, 2016

**Ruling date** April 19, 2016

**Date of Reasons** April 29, 2016

**Appearances**

John D. Whyte	For Virginia Tan, Patrick Eng Tien Tan, Marcus Soon-Keen Tan and Letan Investments Management
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Stephen M. Zolnay	For the Executive Director
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**Reasons**

**I Background**

- [1] Virginia Tan, Patrick Eng Tien Tan, Marcus Soon-Keen Tan and Letan Investments Management (collectively the Applicants) applied on March 23, 2016, under section 171 of the *Securities Act*, RSBC 1996, c. 418, to vary a freeze order dated March 10, 2016 against two bank accounts in the name of 0994439 B.C. Ltd. and TLD Investments Inc.
- [2] The Applicants were seeking the release of funds from the frozen account of TLD Investments Inc. to permit TLD to make certain mortgage and other real property related payments.

[3] On April 19, 2016, after considering the submissions of the parties, and considering it would be prejudicial to the public interest to vary the freeze order, we dismissed the application.

[4] These are our reasons.

## **II Facts**

[5] On March 10, 2016, the Commission issued a freeze order under section 151(2) of the Act against two bank accounts, one in the name of 0994439 B.C. Ltd. and the other in the name of TLD Investments Inc.

[6] This application by the Applicants under section 171 of the Act to vary that freeze order concerns only the bank account in the name of TLD.

[7] As of the date of the freeze order, the bank account of TLD contained \$28,715.25.

[8] Recurring payments (including payments relating to mortgages, a secured loan, property management fees, strata fees and utilities) are made from this TLD account in connection with at least 17 properties in Fort St. John, British Columbia.

[9] It is clear that the amount of the ongoing payment obligations from this account are substantially in excess of any revenue income the account receives from these properties. Both parties put the monthly shortfall at approximately \$19,000 per month.

[10] There are also existing overdue payments to be made from the account of at least \$9,000.

[11] The Applicants submitted affidavit evidence that suggested the possibility of lessening the monthly shortfall as a result of potential additional rental income. Even an optimistic (from the perspective of the Applicants) review of this evidence suggests that any lessening of the monthly shortfall would be some months away and that, at best, the net effect of any rental income increase would be to lessen the shortfall, not eliminate it.

[12] Therefore, the net effect of the application to vary the freeze order would be to have the funds in that account dissipated quickly, if not immediately, to third parties.

[13] The freeze order was obtained in connection with an investigation by the Commission which is at an early stage. No notice of hearing has been issued by the Commission against any of the Applicants.

- [14] Affidavit evidence provided by a Commission investigator suggests that the subject matter of the investigation potentially involves substantial sums of money. This was confirmed by counsel for the Applicants who advised the panel that there have been a number of civil proceedings commenced against one or more of his clients, relating to the subject matter of the Commission investigation, where the claims total approximately \$24 million.
- [15] The Commission has obtained liens against the real property to which the payments made from the frozen TLD account relate.
- [16] There was no evidence introduced as to the equity that may exist within this real property (i.e. no evidence as to land value or the principal amount of mortgages and other secured loans against the real property). Counsel for the Applicants suggested that we may infer that there is likely some existing equity in the real property in question as a number of the mortgages secured against it have been granted in the previous 12 months.

### **III Positions of the parties**

#### **a) Applicants**

- [17] The Applicants submitted that a failure to vary the freeze order would result in various mortgage and other payments not being made and that all of the real property would then be at risk of foreclosure.
- [18] The Applicants submitted that a mareva injunction granted by our courts typically make provision for the payment of ongoing expenses such as mortgage payments and that we should similarly vary the freeze order.
- [19] Finally, the Applicants acknowledged that our assessment of their application would turn on our view of the public interest. They submitted that the public interest assessment is broader than just investor protection and should take into account the prejudice that the freeze order, as currently constituted, would have on the Applicants who have not yet been made the subject of any regulatory proceedings and other third parties who have rights and interests in the real property.
- [20] The Applicants submitted that the freeze order prejudices them through the potential loss of their interests in the real property and potential breaches of their contractual obligations. They submitted that when we weigh that prejudice against the limited benefit that the preservation of approximately \$28,000 would have in the context of potential investor claims that may amount to tens of millions of dollars, we should grant their application.

#### **b) Executive Director**

- [21] The Executive Director submitted that the Applicants had failed to provide sufficient evidence to have us conclude that granting the requested variation would not be prejudicial to the public interest.

- [22] In particular, the Executive Director submitted that one of the intended payments was to support a loan to a third party secured against the real property. The Executive Director submitted that we have no evidence of the nature of this loan, the relationship between that lender and the Applicants nor the connection between the loan and the investigation.
- [23] The Executive Director said that a variation in the freeze order would not accomplish the purpose suggested by the Applicants – namely, saving the real estate from foreclosure. He submitted that the funds in the frozen account were clearly insufficient to sustain ongoing mortgage and other payments and that the funds therein would be consumed quickly by payments to third parties with no potential benefit to investors.
- [24] Finally, the Executive Director submitted that our public interest assessment should only consider protecting funds for the potential benefit of investor claims that may stem from misconduct that may be determined in connection with the ongoing Commission investigation.

#### **IV Analysis**

- [25] The purpose of a freeze order has been considered in a number of decisions of this Commission. In particular, in *Amswiss* [1992], 7 BCSCWS 12, a panel of this Commission set out the following at pp.21 and 22:

In our view, the purpose of section 135(1) [Note: a predecessor to section 151] is to preserve property for the persons who may have common law or statutory claims to or interests in it, for example by way of rescission or damages under Part 14 of the Act.

...

The immediate effect of a freeze order is to maintain the status quo, ensuring that the frozen property is not dissipated or destroyed before the Commission is in a position to determine what, if any, further steps or orders in the public interest should be made under the Act.

...

The power to freeze property quickly is one of those regulatory powers given specifically to the Commission by the Legislature to enhance its capacity to protect the public markets.

- [26] Section 171 of the Act sets out that we may vary or revoke a previous decision of the Commission if to do so “would not be prejudicial to the public interest”.

- [27] Once a freeze order is made, the Commission's authority with respect to the order is limited to revoking it or varying it. The Commission does not determine disposition of frozen assets, a court ultimately does.
- [28] We do not agree with the Executive Director's narrow interpretation of the public interest. We do not see that it is limited solely to considerations of investor protection. While that is obviously an important consideration, other considerations including potential prejudice to the Applicants and third parties, must be considered and balanced.
- [29] In this case, it is clear that the funds in the TLD account would be dissipated quickly, if not immediately, to third parties. This would result in those funds no longer being available for potential investor claims. While the amount is not large relative to what we are told are potentially significant claims, the funds in the TLD account are all that we are concerned with in the application and they would all be gone. It is not evident to us, at this stage, who may have an interest in these funds. Therefore, there is clear prejudice to the public interest caused by this dissipation.
- [30] We agree with the Executive Director that the Applicants have not provided sufficient evidence to establish that some clear benefit to anyone (Applicants, investors or third parties) will be derived from the variation requested. It is evident that the real property is in substantial jeopardy with or without the funds being released from the TLD account.
- [31] Balancing these two factors, we find the Applicants have not established that the requested variation will not be prejudicial to the public interest. Preserving the status quo, at the present time, remains in the public interest.

April 29, 2016

**For the Commission**

Nigel P. Cave  
Vice Chair

Judith Downes  
Commissioner

Don Rowlatt  
Commissioner