

BRITISH COLUMBIA SECURITIES COMMISSION
Section 171 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re Tryton Financial, 2021 BCSECCOM 208

20210517

**Tryton Financial Corp., Saiya Capital Corporation,
Tara Kerry Haddad and Abeir Haddad**

Ruling and Order

Background

- [1] On November 26, 2018, the Executive Director issued Notice of Hearing 2018 BCSECCOM 369, naming amongst others, Tryton Financial Corp., Abeir Haddad, Saiya Capital Corporation, and Tara Kerry Haddad (the Applicants) as respondents.
- [2] On February 15, 2019, the Commission issued Freeze Order COR#2019/040 in respect of four Haywood Securities Inc. accounts owned by Tara Kerry Haddad.
- [3] On February 15, 2019, the Commission registered at the Land Title Office charges on four properties owned by either Tara Kerry Haddad or Tryton Financial Corp.
- [4] On September 6, 2019, the Commission discharged two of the Land Title Office charges, such that the only Land Title liens currently registered with respect to the Applicants are on two properties owned by Tara Kerry Haddad, located at:
 - a. [REDACTED], [REDACTED], British Columbia (PID [REDACTED] [REDACTED]) ([REDACTED]); and
 - b. [REDACTED], [REDACTED], British Columbia (PID: [REDACTED] [REDACTED]).(collectively, the Liens)
- [5] On September 6, 2019, the Commission issued Variation Order COR#2019/171, that varied Freeze Order COR#2019/040. Variation Order COR#2019/171 currently requires Haywood Securities Inc. to hold all funds, securities and exchange contracts, or other property on deposit, under control or for safekeeping in four accounts in the name of Tara Haddad, subject to permitted withdrawals where a minimum balance is maintained.
- [6] On April 27, 2021, the Applicants applied to the Commission under section 171 of the Act to have Freeze Order COR#2019/040, Variation Order COR#2019/171 and the Liens (collectively the Freeze Orders) revoked (Application).

- [7] On April 28, 2021, the Executive Director issued an Amended Notice of Hearing, 2021 BCSECCOM 164, amending 2018 BCSECCOM 369. The Amended Notice of Hearing does not name the Applicants as Respondents, or make allegations against them.
- [8] On April 29, 2021, the Executive Director issued a Notice of Discontinuance, 2021 BCSECCOM 170, discontinuing the proceedings against the Applicants.
- [9] On May 6, 2021, the Executive Director consented to the Application. However, the Executive Director submitted that the panel “may wish to consider” that there are common law claims set out in civil proceedings against the Applicants and others, based on the same or similar conduct alleged in the original Notice of Hearing. He further submitted that the panel may wish to notify the participants in those proceedings if the panel is considering revoking the Freeze Orders. The Executive Director took no position on these submissions and did not provide any analysis to support them. The Executive Director further submitted that, notwithstanding the existence of common law claims, it would not be prejudicial to the public interest to revoke the Freeze Orders in this case.

Analysis

- [10] We have reviewed the submissions of the parties.
- [11] The Commission has consistently held that the purpose of section 151 is to preserve property for persons who may have common law or statutory claims to or interests in it. See: *In the matter of Amswiss Securities Inc.*, [1992] 7 BCSCWS 12, at p. 21-23.
- [12] The Commission further elaborated on that purpose in *Re Sami*, 2012 BCSECCOM 91, at paragraph 35:

The potential statutory claims referred to by the *Amswiss* panel that warrant the protection of a freeze order include not just those arising out of rights of rescission and damages (the example given by the panel) but also those arising out of orders made by the Commission under sections 161(1)(g) (disgorgement of ill-gotten gains) or 162 (administrative penalty), or made by the court under section 157 (compliance). It is manifestly in the public interest that **wrongdoers’ assets** be preserved to satisfy potential claims arising from all of those sources, not to mention common law claims.

[emphasis added]

- [13] None of the previous Commission decisions involved maintaining freeze orders for common law claims in the absence of allegations or claims under the Act.
- [14] Participants in civil proceedings have remedies available to them in the civil courts including applications for a Mareva injunction to freeze the assets of defendants. The courts have provided a well-established test for when it is appropriate to issue Mareva injunctions. That test and the purpose underlying Mareva injunctions are different from

the test and purpose for issuing freeze orders under the Act. See *Re BridgeMark*, 2020 BCSECCOM 346, para. 76-78.

- [15] There are presently no claims under the Act against the Applicants, and the Executive Director has submitted that he is unaware of any other statutory claims. Further, the Executive Director has submitted that he does not intend to recommence proceedings against the Applicants for the conduct alleged in the original Notice of Hearing. As there are no proceedings under the Act pending against the Applicants, there is no prospect of the Commission making orders under the Act against them. As a result, we agree with the Applicants that they cannot be considered “wrongdoers” or “potential wrongdoers” for the purpose of preserving assets under the Act, as outlined in *Samji* and *Bridgemark*.
- [16] In these circumstances, we do not find any prejudice to the public interest in revoking the Freeze Orders.
- [17] There is no support for or merit to the Executive Director’s submission that the panel gives notice to participants in a civil proceeding with regard to this Application.

Order

- [18] Having reviewed the submissions of the parties, and considering it would not be prejudicial to the public interest,
- a. under section 171 we revoke Freeze Order COR#2019/040 and Variation Order COR#2019/171, and
 - b. under section 151(6) we revoke the Liens.

[19] May 17, 2021

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner