

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Sulja Bros. Building Supplies, Ltd., Re, 2007 ABASC 603 Date: 20070816

Sulja Bros. Building Supplies, Ltd., Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries

Panel: Glenda A. Campbell, QC
Stephen R. Murison

Appearing: Samir Sabharwal
for Commission Staff

Date of Hearing: 15 August 2007

Date of Decision: 16 August 2007

I. INTRODUCTION

[1] This proceeding originated in a notice of hearing (the "Notice of Hearing") issued by staff ("Staff") of the Alberta Securities Commission (the "Commission") on 7 August 2007. Staff sought orders against Sulja Bros. Building Supplies, Ltd. ("Sulja Nevada"), Sulja Bros. Building Supplies Ltd. ("Sulja Ontario"), Kore International Management Inc. ("Kore"), Petar Vucicevich ("Vucicevich") and Andrew DeVries ("DeVries") (collectively, the "Respondents"; we sometimes refer to the first two together as the "Sulja Companies") under sections 198 and 202 of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"). (The style of cause for this decision has been amended to reflect the correct business name of Sulja Nevada.)

[2] The hearing was held on 15 August 2007. None of the Respondents appeared. However, Staff tendered two affidavits sworn on 10 August 2007 deposing that the Notice of Hearing and a supporting affidavit sworn on 8 August 2007 by a Staff investigative counsel, Derek Vermette (the "Vermette Affidavit"), had been sent by prepaid post to each Respondent. The affidavits of service indicated that the Notice of Hearing and the Vermette Affidavit had been successfully delivered to each Respondent at addresses that Staff had obtained either through Staff's own research or with the assistance of staff of the Ontario Securities Commission (the "OSC"). Staff also tendered a letter received by them from counsel for Vucicevich and Kore that stated that those Respondents took "no position, at this time, with any application" and denied any relationship with "Sulja Brothers et. al. [sic]". We are satisfied that the Respondents had adequate notice of the hearing and Staff's allegations against them and chose not to attend or otherwise make submissions.

[3] The orders sought by Staff under section 198 of the Act would prohibit any trading in or purchasing of securities of the Sulja Companies; prohibit each Respondent from trading in or purchasing any securities; and deny each Respondent the use of any exemptions under Alberta securities laws. Staff based this request on section 198(1.1)(c), which authorizes the Commission, after providing a respondent with an opportunity to be heard, to make orders under section 198(1) in respect of a person or company that "is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person or company". At the hearing Staff did not pursue their request for an order for payment of costs under section 202 of the Act.

[4] In support of their request for orders under section 198 of the Act, Staff pointed to a temporary order issued by the OSC against the Respondents on 22 December 2006 and subsequently extended on several occasions until 7 September 2007 (the "OSC Order"). The terms of the OSC Order are somewhat narrower than the orders sought by Staff in this proceeding: the OSC ordered that "trading in the securities of Sulja Nevada cease" and that "any exemptions contained in Ontario securities law do not apply to the Respondents".

II. BACKGROUND

A. Facts

[5] The factual background to this proceeding is drawn (except where otherwise indicated) from the Vermette Affidavit. According to this uncontested affidavit, it appears, prima facie, that:

- Sulja Nevada is a Nevada corporation with securities quoted on the "Pink Sheets", an electronic system for trading securities "over the counter" in the United States.
- Sulja Ontario is an Ontario corporation carrying on a building supplies business. It operated in the Windsor, Ontario area. However, news releases issued by the Sulja Companies in April, May and June 2007 indicated that they would be closing Sulja Ontario's head office in Ontario and relocating to Calgary, Alberta. Further, according to an affidavit of service tendered in this proceeding, Sulja Ontario's head office in Ontario has "closed down".
- Sulja Nevada's principal asset is its interest in Sulja Ontario.
- DeVries is based in Texas.
- Vucicevich is based in southern Ontario. He was the chief executive officer of Sulja Ontario (and perhaps of both Sulja Companies) from 7 September 2006 until his resignation on 21 November 2006.
- DeVries and Vucicevich are business associates and have a business relationship with Sulja Nevada.
- Kore is an Ontario corporation with operations in Canada and the United States. Vucicevich is a director. He controls Kore and acts as its operating mind in Canada. DeVries is its operating mind in the United States. Kore has a relationship with the Sulja Companies. In particular, Kore is a significant shareholder of Sulja Nevada, and Sulja Nevada controls Sulja Ontario.
- Sulja Nevada is the product of a "reverse merger" in or around July 2006 with Loftwerks, a shell company that owed a significant debt to the Sulja Companies and Vucicevich. At that time Sulja Nevada issued a large number of additional shares "to raise capital for [the Sulja Companies] so

[they] can expand". Kore was to be remunerated for its assistance with that expansion.

- An arrangement was entered into with employees of Kore and members of the Sulja family (collectively, "Nominees") whereby the Nominees were paid to trade newly issued shares of Sulja Nevada. The Nominees sold such shares, under Vucicevich's direction, through Canadian brokerage accounts opened for this purpose. Vucicevich told the Nominees when to trade, in what quantity and at what price. He also instructed Nominees to act so as to maintain specific share prices.
- This trading raised approximately \$7.8 million. The Sulja Companies received these proceeds and used them to repay debt and operate and expand their business.
- OSC staff have alleged that the Nominees received the Sulja Nevada shares by way of a distribution directly or indirectly (through Kore) from Sulja Nevada's treasury. No prospectus was filed and no available prospectus exemption was demonstrated.
- By letters dated 29 September 2006 each of PricewaterhouseCoopers LLP ("PWC") and KPMG LLP ("KPMG") advised OSC staff that the Sulja Companies had issued news releases containing misrepresentations about their relationship with PWC and KPMG – including false statements to the effect that they were negotiating with PWC and KPMG to handle United States securities law filings and reporting and that the two audit firms were performing audits of the Sulja Companies. Despite demands by PWC and KPMG, these false statements have not been publicly retracted.
- An investigation by OSC staff is ongoing.

[6] The OSC Order stated that it appeared to the OSC that:

6. A prospectus receipt has not been issued for the Sulja Nevada securities, contrary to [Ontario securities law];
7. Sulja Nevada, Vucicevich and DeVries may have participated in trades of common shares of Sulja Nevada resulting in a misleading appearance of trading activity and an artificial price level for the shares, contrary to Ontario securities law;
8. In or around August 2006, at the direction of Vucicevich and/or DeVries, Sulja Nevada issued press releases that contained misleading or untrue material

statements in respect of Sulja Nevada's relationship with PWC and KPMG, contrary to Ontario securities law; . . .

[7] As a result, the OSC, being of the opinion that the time required to conclude a hearing could be prejudicial to the public interest, issued the OSC Order. The OSC Order is temporary in duration, presumably renewable until such time as an OSC hearing is held and a decision rendered.

B. Staff's Position

[8] Staff submitted that the Sulja Companies' stated intention to close Sulja Ontario's head office in Ontario and relocate to Calgary and the apparent closure of Sulja Ontario's head office in Ontario – seemingly on the heels of the action taken by the OSC – were suggestive of a possible avoidance by the Respondents of the consequences of the OSC Order. In the circumstances, Staff contended that there is a significant risk of the Respondents engaging, in Alberta, in a continuation of the conduct described in the OSC Order with all its apparent consequences.

III. ANALYSIS AND FINDINGS

A. The Law

1. Conditions to Use of Section 198(1.1)(c)

[9] This Commission has commented in the past on the purpose of and general principles governing our authority to make orders pursuant to section 198(1.1) of the Act. Recent amendments to the provision, effective 20 April 2007 are, in our view, consistent with such purpose and general principles; indeed, they confirm and expand the scope of our authority as previously construed.

[10] Considering section 198(1.1)(c) of the Act, as it existed prior to 20 April 2007, this Commission stated in *Re Oslund*, 2006 ABASC 1295 (at para. 13):

It can serve as an efficient means for furthering investor protection and the fair operation of Alberta's capital market, and confidence in that market, on the basis of a finding already made in another jurisdiction. Fairness to the respondent is provided by the conditions respecting the use of the provision.

[11] Those conditions, restated with reference to the recent amendments, are: first, that a hearing be held (giving a respondent an opportunity to be heard); and, second, that the respondent be the subject of an order made by another securities regulatory authority imposing sanctions, conditions, restrictions or requirements on them. Both those conditions have been met in respect of the Respondents in this proceeding. A hearing was held; as noted, the Respondents were given notice thereof and an opportunity to be heard. Second, the Respondents are the subject of the OSC Order.

2. Protection of Alberta Investors and Alberta Capital Market

[12] This Commission commented on the application of the reciprocal order power in *Oslund* (at para. 20) as follows:

In *Re O'Connor*, 2005 ABASC 987 (approved in *Re Mitton*, 2006 ABASC 1197 at para. 18) the Commission stated (at para. 23) that its authority under the provision ought to be used judiciously and continued (at paras. 24-26):

. . . This indicates to us that the purpose of the . . . provision is limited to restricting access to the Alberta capital market by those who have sought or might be likely to seek such access and have been found to have engaged in securities-related misconduct elsewhere.

It follows, in our view, that not every decision arising from a securities matter will warrant the application of subsection 198(1.1). Each case will have to be determined on its facts. We agree with Staff that it is not necessary to demonstrate a nexus, in the sense of evidence of actual conduct or actual harm in Alberta, as a prerequisite to the application of subsection 198(1.1). We do, however, believe that there must be a compelling reason to invoke this provision.

While we recognize that subsection 198(1.1) does not use the words, we believe that it is appropriate to rely on the provision only when doing so would provide protection to Alberta investors and the Alberta capital market.

[13] In this case, we believe that the Sulja Companies' stated intention to close Sulja Ontario's head office in Ontario and relocate to Calgary and the apparent closure of Sulja Ontario's head office in Ontario may have been prompted, in part at least, by a desire to avoid or evade the jurisdiction of the OSC and thus the consequences of the OSC Order. With that in mind, and having regard to the evidence and the conduct of the Respondents to which the OSC Order is directed, we are persuaded that there is, *prima facie*, a risk of a repetition or continuation of the same or similar conduct in Alberta. This risk is heightened with the apparent planned move of Sulja Ontario's head office to this province.

[14] This risk, in our view, is real and current and sufficiently serious for us to invoke our protective power under section 198(1.1)(c) of the Act. We conclude that it is in the public interest to make orders under section 198(1) of the character sought by Staff.

3. Scope of Orders Sought

[15] As noted, the orders sought by Staff are broader than their counterparts in the OSC Order. Staff submitted that we have the authority to depart from a strict parallel with the OSC Order if we consider it to be in the public interest to do so.

[16] In this case, Staff contended that possible confusion (apparent in published material in evidence) between the two very similarly named Sulja Companies warrants our barring trading in the securities of both companies. Further, Staff pointed to the nature of the conduct of the Respondents described in the evidence and in the OSC Order as calling for not only a denial of exemptions but also a ban on purchasing and trading of securities by all Respondents.

[17] We agree. As stated in *Oslund* (at paras. 22, 24 and 26):

It is not required under subsection 198(1.1) that the sanctions be the same as or similar to those ordered in another jurisdiction.

....

Our primary concern is the protection of Alberta investors and the Alberta capital market. . . .

....

. . . . [I]n applying the provision, it is reasonable to consider whether the terms of the sanctions [or orders] themselves are conducive to the efficient administration and enforcement of securities laws.

[18] We conclude that orders of the scope sought by Staff would appropriately restrict the Respondents' access to the Alberta capital market and are therefore in the public interest.

4. Duration of Orders

[19] The OSC Order is temporary. It has been extended on several occasions, most recently on 30 July 2007, until 7 September 2007. There is no reason to believe that a further extension will not be forthcoming.

[20] Applying the general principles enunciated in *Oslund* and elsewhere – notably efficiency and protection – we are of the view that the orders we make in this case can and should, in the public interest, remain in effect for the same duration as the OSC Order, as it may from time to time be extended.

IV. ORDERS

[21] For the reasons given, pursuant to section 198(1.1)(c) of the Act, we order that, for so long as the OSC Order (as from time to time extended) remains in effect:

- under section 198(1)(a) of the Act, all trading in the securities of Sulja Nevada and Sulja Ontario must cease;

- under section 198(1)(b) of the Act, the Respondents must cease trading in or purchasing any securities; and
- under section 198(1)(c) of the Act, all of the exemptions contained in the Alberta securities laws do not apply to the Respondents.

16 August 2007

For the Commission:

"original signed by"

Glenda A. Campbell, QC

"original signed by"

Stephen R. Murison