

CANADA / JUDGMENT

Le Soleil Hospitality Inc. v. Louie

2015 BCSC 2372

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2372 Le Soleil Hospitality Inc. v. Louie

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Le Soleil Hospitality Inc. v. Louie,

2015 BCSC 2372

Date: 20151026

Docket: S056026

Registry: Vancouver

Between:

Le Soleil Hospitality Inc. and Le Soleil Restaurant Inc.

Plaintiffs

And

Andrew Louie, 668706 British Columbia Ltd., 688571 British Columbia Ltd., 708583 B.C. Ltd.,
716642 B.C. Ltd., 716648 B.C. Ltd., 700439 B.C. Ltd.

and 587019 B.C. Ltd.

Defendants

And

567 Hornby Apartment Ltd.

Defendant by Counterclaim

Before: The Honourable Madam Justice Dickson

Corrected reasons: These reasons were corrected at paragraphs 22, 24 and 32 on December 16, 2015.

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

Paul A. Brackstone

Counsel for the Defendants:

Glen P. Forrester

Appearing for the Defendant by Counterclaim:

Jewel Nomani

Place and Dates of Hearing:

Vancouver, B.C.

August 24-26, 2015

Place and Date of Judgment:

Vancouver, B.C.

October 26, 2015

- [1] THE COURT: The applicant defendants, Dr. Andrew Louie and his numbered companies, apply for an order setting aside a Mareva injunction order I made in these proceedings on March 6, 2009. In the alternative, they seek an order that would significantly restrict the scope of the Mareva order. In the reasons that follow I will refer to the applicant defendants together as the "Louie Group" and to the respondent plaintiffs, Le Soleil Hospitality Inc. and Le Soleil Restaurant Inc., together as "Le Soleil."
- [2] On September 30, 2009, I granted judgment in favour of Le Soleil in these proceedings. I assessed damages on some aspects of the award and left others to be assessed by the Registrar. On this application, the Louie Group claims that Le Soleil misrepresented the value of the unassessed portion of the award on its application for writs of seizure and sale brought in 2011 but settled in part by a Forbearance Agreement. According to the Louie Group, Le Soleil failed to disclose a material settlement with different defendants in related actions in the application materials, which failure amounted to a material misrepresentation. The Louie Group goes on to say that it relied on Le Soleil's misrepresentation when it concluded the Forbearance Agreement, the terms of which prohibit a variation application such as this from being brought.

- [3] According to the Louie Group, the Forbearance Agreement should be rescinded due to Le Soleil's misrepresentation and this application should be determined despite the terms of the Forbearance Agreement. In its submission, given Le Soleil's misrepresentation and other misconduct, changed circumstances since the Mareva order was made, and resulting prejudice the Mareva order should be set aside or varied.
- [4] Le Soleil resists the application. It denies that it has misconducted itself, that circumstances have changed materially, and that the Louie Group has suffered prejudice in connection with the Mareva order. It also relies on the Forbearance Agreement, which it says should stand.
- [5] The issues for determination are:
1. Should the Forbearance Agreement be rescinded?
 2. If the Forbearance Agreement is not rescinded, should the Mareva order be set aside or varied?
 3. If the Forbearance Agreement is rescinded, should the Mareva order be set aside or varied?
 4. Has the Mareva order expired in any event?

Factual Background

- [6] These actions concern a hotel and restaurant located in Vancouver. The parties are Le Soleil, the Louie Group, 567 Hornby Apartment Ltd. and Jewel Nomani. Mr. Nomani is the principal of 567 and Dr. Louie's business advisor.
- [7] The parties became embroiled in litigation regarding ownership and control of the hotel and restaurant over a decade ago. The litigation grew to include many proceedings, including these. A group of Singaporean hotel investors known as the LSOG defendants were parties in related actions, which include the actions determined in *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303. I will refer to the related actions as the "Le Soleil Actions."
- [8] I ruled in favour of the plaintiffs and against the LSOG Defendants in *Le Soleil Hotel & Suites Ltd.*
- [9] The trial of these actions concluded in March 2009, when, by consent, I pronounced the Mareva order. Pursuant to its terms, the Louie Group is restricted from dealing with any of their assets until final disposition of the actions or further order of the Court.
- [10] On September 11, 2009, the Louie Group applied to set aside the Mareva order, but I dismissed the application. In doing so, I held there was a risk that Dr. Louie would dissipate or dispose of assets and remarked on the short period the Mareva order would likely remain in force.

- [11] On September 30, 2009, I granted judgment in Le Soleil's favour in these actions. As noted, the damages award had several elements, including approximately \$2.2 million in assessed damages for breach of contract and punitive damages, all reasonably incurred legal fees and disbursements in related actions as assessed by the Registrar, and special costs. The related actions referred to in the unassessed portion of the award included the Le Soleil actions involving the LSOG defendants. I will refer to the unassessed portion of the award, including special costs, as the "Costs Debt."
- [12] On August 23, 2010, I issued lengthy written reasons in these actions. The Louie Group appealed to the British Columbia Court of Appeal, but in June 2011 their appeal was dismissed. In March 2012, their application for leave to appeal to the Supreme Court of Canada was denied.
- [13] Although over three years have passed since appeal prospects ended, the Costs Debt has not yet been assessed by the Registrar. Perhaps unsurprisingly, the reasons for the long delay are multifactorial. Each party points the finger of blame at the other and complains of their contributory actions or inactions in connection with the long delay at issue. Given my conclusions on the Forbearance Agreement, however, I consider it neither necessary nor prudent to attempt to make findings regarding what delay was caused by whom and why.
- [14] Shortly after I granted judgment, Le Soleil's counsel advised the Louie Group's counsel that the total damages and special costs award would likely exceed \$8 million. Thereafter, counsel exchanged correspondence on many matters, including document production, consent variations to the Mareva order and requests for particulars. In 2011, Mr. Taylor replaced Mr. Forrester as counsel for the Louie Group, which also retained Mr. Turriff regarding assessment of the Costs Debt. As a result of the change in counsel, the Louie Group obtained an adjournment of the assessment appointment previously taken out by Le Soleil.
- [15] On January 6, 2012, Le Soleil filed an application under the Court Order Enforcement Act, R.S.B.C. 1996, c. 78, for an order to sell Dr. Louie's residence. On February 16, 2012, it delivered an application for the issuance of two writs of execution, one in respect of the assessed damages award and one in respect of the unassessed Costs Debt. The application for a writ of execution concerning the assessed portion of the award was in the amount of \$2.1 million. The application for a writ of execution concerning the unassessed Costs Debt was in the amount of \$3 million. Le Soleil also sought an order that I conduct the Costs Debt assessments, but this was later abandoned due to developments in the law.
- [16] When Le Soleil brought its application for writs of execution it had reached settlements with certain LSOG defendants in the Le Soleil actions. Pursuant to the terms of the settlements, Le Soleil was credited with approximately \$1.3 million on account of associated costs. Most, but not all, of the settlement transactions were complete by January 31, 2012, but the LSOG recoveries were not mentioned or accounted for in the materials Le Soleil produced on the writs of execution application.

- [17] Le Soleil's representative, Mr. Sayani, deposes that he did not intend to conceal the LSOG settlements from the Louie Group or the court in the writs of execution application materials. I accept his evidence in this regard. I also accept that the Costs Debt estimate would have exceeded the \$3 million sum Le Soleil sought on the application even if the LSOG settlement had been taken into account.
- [18] Mr. Sayani deposes further that he believed the Louie Group knew about the LSOG settlements in 2012 when Le Soleil brought its application. According to Dr. Louie, however, this was not the case. On the contrary Dr. Louie denies knowing of the LSOG settlement in 2012, as does his solicitor, Mr. Aleksejev. Both Dr. Louie and Mr. Aleksejev have sworn affidavits to this effect.
- [19] If I was required to make a factual finding on Dr. Louie's actual state of knowledge in 2012 regarding the LSOG settlement to determine this application I would refer it to the trial list. The contemporaneous documents are equivocal and neither Dr. Louie nor Mr. Aleksejev has been subjected to cross-examination. In addition, the Louie Group's counsel at the time, Mr. Taylor, has not provided an affidavit, nor have his file materials been produced for inspection.
- [20] Amongst other problems, it would be a very serious matter for me to find that Mr. Aleksejev, a lawyer, has been, at best, misleading in his sworn evidence. I am not prepared to make such a finding based on untested affidavits, incomplete document production and missing relevant testimony.
- [21] I conclude, however, that a factual finding on this question is unnecessary. This is because it is abundantly clear on the evidence presented that the Louie Group was generally aware of the LSOG settlements by, at the latest, mid-2013. For example, in a July 5, 2013 e-mail Mr. Turriff sent to Le Soleil's counsel, he referred to the "Singaporean settlement" and stated:
- As I understand it the action S022713 was settled on terms requiring the owners to pay to your client about \$1.8 million.
- [22] I agree with Le Soleil that the only possible inference to be drawn from the foregoing communication is that someone from the Louie Group had independent knowledge of the settlements. I also agree with counsel for the Louie Group that Le Soleil should have produced the settlement documents sooner than it did in the assessment proceedings. As I understand it, the settlement documents were not produced until September 2014. Nevertheless, Le Soleil's failure to disclose the LSOG settlement documents promptly does not detract from the fact that the Louie Group actually knew about the LSOG settlements in July 2013. As discussed below, the Louie Group's failure to act promptly to disaffirm the Forbearance Agreement, given that state of knowledge, militates strongly against their plea for rescission.

- [23] At approximately the same time in early 2012 when Le Soleil was seeking the writs of execution, the Louie Group announced its intention to apply to vacate or vary the Mareva order. Counsel exchanged correspondence, negotiations were conducted, and, on March 16, 2012, the competing applications were resolved, in part, without a hearing by conclusion of the Forbearance Agreement.
- [24] Pursuant to the terms of the Forbearance Agreement Le Soleil agreed to hold its execution proceedings in abeyance until the Costs Debt was determined by assessment, agreement or otherwise. In exchange, the Louie Group agreed not to apply to vary, vacate or otherwise alter the Mareva order until the Costs Debt was determined, while retaining the right to apply for a variation for specified purposes. Amongst other things, the parties also agreed to enter into a lease modification agreement in respect of the restaurant premises.
- [25] Dr. Louie deposes that he entered into the Forbearance Agreement based on the threat of Le Soleil enforcing the unassessed portion of the damages award and Le Soleil's representation regarding the estimated amount that was due and owing on the Costs Debt. According to Le Soleil, I should reject Dr. Louie's evidence on this point. Again, if I was required to make a factual finding as to whether Dr. Louie did or did not rely on Le Soleil unassessed Costs Debt estimate in concluding the Forbearance Agreement to determine this application I would refer the matter to the trial list. Again, in the absence of cross-examination and other possibly available evidence, in my view this contentious factual matter cannot fairly be determined. However, given the legal test for rescission and other facts that can be found on the material presented I need not make a finding on the reliance point.
- [26] When the Forbearance Agreement was concluded the Louie Group still owed money on account of the assessed portions of the trial judgment. By approximately the spring of 2013, the assessed portions of the judgment had been paid in full. Since then, the Louie Group has made additional payments towards the unassessed Costs Debt. As I understand it, by the spring of 2015 approximately \$4.2 million had been paid.
- [27] The parties disagree on the likely quantum of the outstanding balance on the total award made in these actions. According to Mr. Sayani the balance continues to exceed \$3 million. According to Dr. Louie it is likely considerably less. Significant procedural steps have recently been taken in the assessment proceedings. However, the assessment proceedings will not likely be resolved by the Registrar until sometime in 2016.
- [28] Dr. Louie deposes that the Louie Group has real property assets with a net worth of approximately \$8.3 million, which vastly exceeds the sum outstanding on anyone's estimate. He bases this assertion on his estimates of asset value, but provides limited independent evidence in support. He also deposes that his business and personal interests are being prejudiced by continuation of the Mareva order and complains of Le Soleil's alleged misconduct in connection with its existence. For example, Dr. Louie complains about Le Soleil's participation in negotiations regarding certain properties located in Surrey, an uncooperative attitude regarding Mareva order variations for legal fees, and inadequate

document production.

[29] Dr. Louie goes on to depose that he would not have "agreed to permit" the Mareva order to remain in place post-judgment had he known about the LSOG settlement earlier. At paragraph 124 of his April 17, 2015 affidavit he lists several forms of alleged prejudice he says he has suffered due to the ongoing Mareva order. For example, he says that, but for the order:

the Louie Group would have been able to limit the scope of the security held by Hospitality so that it would have been able to enter into more favourable arrangements with respect to the mortgages against its properties;

the Louie Group would not have agreed to endure caps on legal fees that it is permitted to spend in respect of the litigation; and

the Louie Group would not have incurred legal fees in respect of the numerous variations of the Mareva order, and legal fees in respect of negotiations it has been forced to enter into with Hospitality in respect of many past dealings with property and finances.

[30] In response, Le Soleil denies engaging in any misconduct in connection with the Mareva order. On the contrary, it says the Louie Group is the party that has miscondacted itself. For example, Le Soleil submits the Louie Group breached the Mareva order, failed to review available documents and made a bad faith settlement offer. In addition, the Louie Group has failed to establish any real prejudice caused by the Mareva order and ignored the significant benefits that it has received under the Forbearance Agreement.

Discussion

Should the Forbearance Agreement be rescinded?

[31] Rescission is an equitable remedy. Its application is discretionary: *Kupchak v. Dayson Holdings Co. Ltd.* (1965), 53 D.L.R. (3d) 482.

[32] In *Palcic v. Sadek*, 2013 BCCA 440, the Court cited *Kingu v. Walmar Ventures Ltd.* (1986), 10 B.C.L.R. (2d) 15 (C.A.), regarding the test for rescission based on an innocent misrepresentation. In summary, a party applying for rescission must establish the following preconditions in order to succeed:

- a. a positive misrepresentation of an existing fact by the other party;
- b. made with the intention that the plaintiff should act on it;
- c. the representation must have induced the plaintiff to enter into the subject agreement;
- d. the plaintiff must have acted promptly after learning of the misrepresentation to disaffirm the contract;

- e. no innocent third parties must have acquired rights for value with respect to the contract property;
- f. it must be possible to restore the parties substantially to their pre-contract position.

- [33] According to the Louie Group, the test for rescission has been met on the facts established on this application. In its submission Dr. Louie was induced to enter into the Forbearance Agreement by Le Soleil's misrepresentation in the writs of execution materials regarding the Louie Group's liability for the unassessed Costs Debt. While Le Soleil accepts the misrepresentation may have been innocent, it says Dr. Louie entered into the Forbearance Agreement based upon this material misrepresentation. It also says the Louie Group has taken no steps to affirm the Forbearance Agreement since Le Soleil finally produced the LSOG settlement documents in September 2014.
- [34] The Louie Group goes on to submit that it would be just and equitable to rescind the Forbearance Agreement and return the parties to their pre-contractual positions. Although it concedes this might have been problematic given the existence of lease extensions entered into pursuant to the Forbearance Agreement, any potential difficulty in this regard is resolved, it says, by its acknowledgment that the lease extensions remain valid and in good standing regardless of the result of this application.
- [35] I do not agree with the Louie Group for the following three reasons.
- [36] First, it is far from clear that Le Soleil ever made a positive misrepresentation of an existing fact capable of engaging the rescission doctrine. At most, the misrepresentation alleged by the Louie Group concerns Le Soleil's own estimate of the likely value of the assessed Costs Debt. Given the background and context of the writs of execution application, precision on this point was not possible, expected, or offered. In addition, and in any event, even when the LSOG settlements are accounted for Le Soleil's estimate of the unassessed Costs Debt exceeded the \$3 million sum that it sought on the application.
- [37] Second, by July 2013 the Louie Group was generally aware of the LSOG settlement, regardless of whether it was in possession of the actual settlement documentation. Despite this knowledge it did not promptly disaffirm the Forbearance Agreement, which is a necessary precondition for the rescission doctrine to apply. On the contrary, the Louie Group continued to take the benefits of the Forbearance Agreement from July 2013 onward despite its claim that Dr. Louie entered into the agreement in the first place based on what he later learned was a material misleading non-disclosure. These benefits included a de facto stay of execution and the credits that were accruing under the lease. Although he now says he was misled in 2012, Dr. Louie had the relevant information by 2013 but chose to carry on receiving those significant ongoing benefits.

[38] Third, it is not possible to restore the parties substantially to their pre-contract positions. Le Soleil has been deprived of the otherwise available benefits of execution proceedings since 2012 based on the terms of the Forbearance Agreement. That deprivation simply cannot be undone.

[39] Taking into account all of the forgoing, I decline to order rescission of the Forbearance Agreement.

If the Forbearance Agreement is not rescinded should the Mareva order be set aside or varied?

[40] The terms of the Forbearance Agreement are unambiguous. The agreement reads, in relevant part:

WHEREFORE THE PARTIES AGREE AS FOLLOWS:

- 1) Hospitality and Restaurant will hold their applications for writs of execution and sale of property in abeyance until the damages for the covenant not support litigation and the special costs of the Hospitality Actions are determined by assessment, agreement or otherwise.
 - 2) Other than as set out in clause 3 the Louie defendants will not apply to vary, vacate or otherwise alter the Mareva order until the damages for the covenant not to support litigation and the special costs of the Hospitality Actions are determined by assessment, agreement or otherwise.
 - 3) The Louie defendants can apply to vary the Mareva order to allow for payment of retainers for legal services or to effect refinancing the sales of properties or similar transactions on commercially reasonable terms in connection with the settlement, payment or partial payments of the judgments.
- [41] This application does not fall within the clause 3 exceptions and damages for the covenant not to support litigation and the special costs of the Hospitality actions have not been determined yet. In these circumstances, clause 2 applies and the Louie Group is precluded from bringing an application to vary, vacate or otherwise alter the Mareva order at this juncture. I do not accept that there is any persuasive evidence that clause 2 should not be enforced because of any bad faith dealings on the part of Le Soleil in respect of the Mareva order.

[42] Accordingly, the application must be dismissed.

Has the Mareva order expired in any event?

[43] According to Mr. Nomani, the Mareva order has already expired because it enjoins the Louie Group from disposing of its assets only "until the final disposition of this action." In his submission, the final disposition of the action occurred when the leave application was dismissed by the Supreme Court of Canada on March 15, 2012. Accordingly, he says, the Mareva order is no longer operative.

- [44] In some proceedings the words "the final disposition of this action" included in an order may well refer to the point at which possible appeal processes have been exhausted. For example, in *Cabaniss v. Cabaniss*, 2010 BCSC 326, the order of Maczko J. was interpreted in this manner. However, that is not the appropriate interpretation to be applied in this case. On the contrary, the order granted in this case expressly contemplates assessment of the Costs Debt before final disposition of the action is achieved.
- [45] So thank you, counsel and Mr. Nomani. Unless you have any questions, those are my reasons.
- [46] MR. BRACKSTONE: My Lady, the only question is what we should be doing with costs of the application.
- [47] THE COURT: All right. Do you have any submissions you want to make on that?
- [48] MR. BRACKSTONE: Well, costs of all of the assessment procedures remain at large. I have taken the position with my friend with respect to that. My submission, though, with respect to this would be that Your Ladyship is in a position to make an order for special costs with respect to this particular application.
- [49] Given the conduct of the Louie defendants, and what I am referring to here includes the breaches of the Mareva order, which Your Ladyship discussed in the context of the Surrey property. Your Ladyship made in finding with respect to the good faith or bad faith offer but certainly Your Ladyship made findings with respect to Surrey properties during the course of the submissions.
- [50] And the complete shift in the basis of the application that occurred on the second or third day of the hearing, which required basically a whole new application. And that was the basis of Your Ladyship's reasons at the end of the day. So I would submit Your Ladyship can either make an award of special costs of this application or alternatively leave that to be decided by some other judge or registrar after the assessment of the costs. I would prefer the former obviously.
- [51] THE COURT: All right.
- [52] MR. FORRESTER: My Lady, I am glad to have the opportunity to speak to the issue of special costs of this application. There is no dispute that costs generally follow the event. But in this proceeding there is a -- there is a tremendous amount of grey area. I mean, there was the failure of Le Soleil to disclose the LSOG settlement for over a year after it had been requested. And indeed the actual Forbearance Agreement itself was not disclosed despite requests of counsel. There has never been a signed copy of the agreement. I requested that agreement from my friend and it was never responded to.

- [53] So really the actual crystallization of the existence of that agreement did not really -- we knew that there was other correspondence to that effect, but the agreement that the plaintiff relied upon in the course of this hearing it did not crystallize until the hearing of the application that that was the actual agreement that was in effect.
- [54] And there was also a number of positions that are on the record that were taken by the plaintiff in refusing what would otherwise be routine variances of the Mareva order, My Lady. So what I would say is that this is not a time that the plaintiff should be awarded special costs. There should just be regular costs of this -- of this particular application.
- [55] MR. NOMANI: Yes, My Lady. I agree with Mr. Forrester that the costs because this is not a typical issue that was in that trial. And also part of the delay from my point of view has been that plaintiff always thought that subsequent to the trial all of the proceedings would be special costs and on that basis they proceeded. And I believe that part of the delay is because of the expectation that all of the costs should be special costs.
- [56] So I believe if it is just regular costs then parties will really think twice and try to really minimize steps in the court and to spend money. Because otherwise if one party have the expectation that they will be getting special costs all the time then they would be pretty much lengthen any future steps.
- [57] THE COURT: Thank you.
- [58] MR. NOMANI: Thank you.
- [59] MR. BRACKSTONE: My Lady, I will just make three brief points in reply. But the first one is to Mr. Nomani's last submission. To the contrary, special costs would deter the type of what my client is misconduct that the defendants have engaged in since the commencement of the assessments.
- [60] Your Ladyship made no findings with respect to that conduct on the reasons for judgment, but you will recall the submissions. I am not sure that Your Ladyship is going to make any findings now on the costs assessment. I think it is --
- [61] THE COURT: I am not going to.
- [62] MR. BRACKSTONE: The second point is again with respect to Mr. Forrester's comments about routine variances. You heard --
- [63] THE COURT: I am not going to make findings.
- [64] MR. BRACKSTONE: Precisely. You are aware of --
- [65] THE COURT: Either way.
- [66] MR. BRACKSTONE: -- of my client's position. You are aware of my friend's position. I am not going to repeat those arguments. So those two --

- [67] THE COURT: One thing I should say to you, Mr. Brackstone, I did make remarks about breach of the Mareva order in respect of the Surrey property, and I am comfortable with that conclusion. I do not find that there was a bad faith settlement offer. I accept what Mr. Forrester said about the fact that it was well known that Mr. Nomani was going to be involved and that was expected. So that does not concern me.
- [68] MR. BRACKSTONE: Okay. My last reply position to anything substantive that my friends say would be my friend's comment about the Forbearance Agreement not being produced. It was negotiated between counsel.
- [69] THE COURT: All right.
- [70] MR. BRACKSTONE: Certainly the lawyers were aware of the terms at all times.
- [71] THE COURT: All right. The application and some of the background facts leading to the application certainly are not examples of ideal conduct on the part of the Louie Group in particular. However, it is not my view that it rises to the level of special costs. And that being the case I am simply going to order regular costs on this application.
- [72] MR. BRACKSTONE: My Lady, there is an issue of scale of those costs. This would seem to be a Scale C type of application, given the massive amount of factual preparation and the legal issues that we have to deal with on the fly.
- [73] THE COURT: All right. Particularly the latter point.
- [74] MR. BRACKSTONE: I see.
- [75] THE COURT: I think that is fair, Mr. Forrester, unless you can convince me otherwise. Why would I do anything other than that?
- [76] MR. FORRESTER: I do not have any submissions on the point.
- [77] THE COURT: All right. Mr. Nomani, do you?
- [78] MR. NOMANI: No.
- [79] THE COURT: All right. So Scale C.
- [80] MR. BRACKSTONE: And, My Lady, there was -- there was one other term that was to go into Your Ladyship's order, which was in my letter to the registry. The whole basis that the application was proceeding before Your Ladyship and the parties were taking the position that it could be decided by Your Ladyship as opposed to being referred to the trial list was on the basis that Your Ladyship's order would contain an order with respect to the Louie's defendants acknowledgment with respect to the binding nature of the lease extensions.
- [81] THE COURT: Yes, you want that to be a term of the order.
- [82] MR. BRACKSTONE: Yes, My Lady.

[83] THE COURT: I read that and also though you will see that I disagreed with you that I could make all of the findings that you were asking me to make, I am certainly happy to include that as a term of the order. I presume that is --

[84] MR. FORRESTER: Well, it was agreed to as a condition.

[85] THE COURT: Yes.

[86] MR. FORRESTER: So certainly.

[87] THE COURT: Yes. All right, I will include that as a term of the order.

[88] MR. BRACKSTONE: Thank you, My Lady.

[89] THE COURT: Is there anything else? No?

[90] MR. FORRESTER: Thank you, My Lady.

"DICKSON J."

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