

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-060303-217

DATE: January 7, 2022

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

AUTORITÉ DES MARCHÉS FINANCIERS

Plaintiff

v.

FINANCE SILVERMONT INC.

CAPITAL SILVERMONT INC.

LES INVESTISSEMENTS GREEN RIVER INC.

GREEN RIVER FINANCE CANADA INC.

9129-6004 QUÉBEC INC. (F.A.S. FINANCEMENT GREEN RIVER INC.)

FIDUCIE DE REVENU MARDI.INFO;

FIDUCIE D'OPÉRATION (D'EXPLOITATION) MARDI.INFO;

MARDI.INFO MARCHÉ DISPENSÉ S.E.C.;

MARDI INFO COMMANDITÉ INC.;

9428-5855 QUÉBEC INC.

Defendants

and

RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.

Administrateur provisoire

JUDGMENT
ON THE GREEN RIVER CONTESTATION

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Overview

[1] 9129-6004 Québec inc. (D.B.A. Green River Financing) ("Green River Québec"), Green River Finance Canada Inc. ("Green River Ontario") and Green River Investments Inc. (collectively "Green River" unless the context dictates otherwise) have been placed under receivership pursuant to a request by the Autorité des marchés financiers on October 15, 2021 (the "Immer Judgment").

[2] As is permitted in such matters by the *Act respecting the regulation of the financial sector*¹ (the "Act"), the hearing was held *ex parte* and *à huis clos*. As also allowed by the Act, Green River filed a contestation after the Immer Judgment was rendered.

[3] This contestation was eventually heard alongside the contestation of two further groups of Defendants, namely the MarDi Group and the Silvermont Group. This Court dismissed the MarDi Group's contestation (the "MarDi Judgment") and the Silvermont Group's contestation (the "Silvermont Judgment") in judgments rendered concurrently with this judgment.

[4] Green River contests the Judgment indicating first that the allegations made by the AMF against Green River "are far from sufficient to justify the appointment of a receiver". Secondly, it argues that the AMF "failed to comply with its obligation of full and frank disclosure". Green River raises four distinct factual themes:

4.1. When dealing with Calixa Partners, Green River Investments dealt with John Vergados and not Efstratios Gavriil. They had no links with Gavriil and cannot be held to have known of his involvement in Calixa Partners. The information provided by the AMF suggesting otherwise is false and misleading.

4.2. They admit that money was exchanged between Green CBD and Green River' principal, John Theofilis and Green River Québec. This related to bona fides loans and they cannot be held responsible for improper use of funds carried out by Green CBD in other contexts unrelated to them.

¹ CLRQ, c. E-6.1.

4.3. There is no confusion between the three Green River entities and they cannot be dealt with indistinctly. It is Cape Cove who put the Green River Finance logo on its web site as an issuer generating potential confusion. Green River has no control over Cape Cove's web site and cannot be held responsible therefore. The exempt issuer has always been Green River Investments and in fact, the Ontario incorporated Green River Finance Canada Inc. has never operated.

4.4. They admit that Green River Investments did not file "certain documents" with the AMF in contravention of the *Regulation 45-106*.² They claim that the *Act* relates to "embezzlement and unacceptable management which could endanger the rights of investors", but not to failure to file the documents. Hence, the AMF should be limited to seeking administrative monetary penalties.

[5] Green River argues that the Court should deal with the contestation as if what is at stake is interim relief. Hence the Court should examine whether there is an appearance of right, irreparable harm and whether the balance of inconvenience weighs in favour of Green River. In Green River's submissions, it does. Hence, the receivership should be annulled.

[6] Prior to analyzing Green River's contestation, the Court will make certain comments regarding the Applicable Legal Principles, the Corriveau Judgment and the facts alleged in the AMF's *Demande présentée ex parte et à huis clos afin d'ordonner la nomination d'un administrateur provisoire*.

Applicable Legal Principles

[7] To rule on Silvermont's contestation, the Court will apply the principles which it has explained in detail in the *Cadre legal* set out at paragraphs 11 to 22 of the MarDi Judgment and which it incorporates by reference herein.

[8] In summary, to decide the matter, it will use the approach set out at paragraphs 21 and 22 of the MarDi Judgment, which is reproduced below for ease of reference:

[21] Il écarte la première approche et opte plutôt pour la deuxième approche. Ainsi, l'approche à privilégier est la suivante :

[56] In my view the second approach should be adopted in Quebec as well. When there is material non-disclosure, the following factors should be considered by the judge hearing a motion to rescind or annul an ex parte order:

- the importance of the omitted facts to each of the issues decided by the judge;

² *Regulation 45-106 respecting Prospectus exemptions*, CLRQ c. V-1.1, r. 21.

- whether the omission was inadvertent, its relevance was misconstrued or whether the omission was made with the intent to mislead the judge;

- the prejudice occasioned to the party affected by the ex parte order;

- whether the order reviewed could be granted again on the basis of a corrected record.

[22] Ainsi, le Tribunal retient que pour chacun des éléments soulevés par le groupe MarDi, il doit s'interroger s'il s'agit d'un « material non disclosure » et si oui, selon l'importance du fait, les raisons pour lesquelles il ne lui a pas été présenté, le préjudice que cela occasionné et si au final, il aurait rendu une décision différente.

[9] Aside from the issue of failure to disclose material facts, Green River also appears to want to litigate anew the “sufficiency” of the allegations contained in the AMF demand. The Court however, is not acting in a manner analogous to the quashing of a seizure where the Code of Civil Procedure explicitly provides that the Court may review the sufficiency of the allegations contained in the affidavit in support of the petition for a seizure. It is also not called upon to renew interim relief, which allows the Court to re-examine the application *de novo*. Hence, this Court will not entertain arguments of sufficiency as, failing any legal authority to do so, it would sit on appeal of its own Judgment.³ Section 19.14 of the *Act* specifically does not allow appeals. Even if it did allow appeals, it would be for the Court of Appeal and not for this Court to decide the matter.

[10] In addition, with respect, the Court finds that relying on the principles developed in matters of interlocutory injunctions or in matters dealing with other provisional relief, is not helpful nor appropriate. It is true that a receivership is granted on the basis of the finding of “reasonable grounds” that one or more of the scenarios set out in s. 19.1 of the *Act* are present which may suggest that it is interim in nature. However, the judgment which the Court renders is indeed final on the issue of receivership. There will be no later debate on the merits of the scenarios set out in s. 19.1 of the *Act*, namely, amongst others, whether there is a loss of assets, embezzlement or unacceptable management practices. The receivership will be carried out until it is no longer necessary and subject to any applications made under s. 19.11 of the *Act*. The criteria of balance of inconvenience is therefore irrelevant. What is at stake are the interests of the investors.

³ The Court of Appeal did allow an appeal on this basis in *Marciano (séquestre de)*, 2012 QCCA 1876.

The Corriveau Decision in Cape Cove

[11] This Court incorporates by reference sub-section 1. *Contexte du dossier Cape Cove donnant lieu au Jugement Corriveau* of its *Analyse* of the MarDi Judgment including, the facts relating to Gavriil, Cape Cove and Green CBD.

[12] Building on this first factual foundation, the Court will carry out its analysis by first reviewing the facts which were presented to the Court on October 15, 2021 via the AMF's *Demande présentée ex parte et huis clos afin d'ordonner la nomination d'un administrateur provisoire* (hereinafter "Demande") as they related to Green River and which lead to the Immer Judgment. It will then examine the three factual themes specifically raised by Green River.

The Green River Group's Contestation and the Three Factual Themes

1. The facts alleged regarding the Green River entities

[13] Green River Investments was incorporated on January 12, 2017. It is now radiated after failing to file two annual declarations.⁴ Its shareholders are Target Capital Inc. and John Theofilis. Target Capital Inc. is the majority shareholder in order to ensure that the investments may qualify as RRSPs, RESPs, TFSAs or RIFFs. In practice, it is Theofilis who manages the corporation and who is its sole director.

[14] These are the facts which the AMF alleges to show that it has grounds to believe that either of the scenarios set out at paragraphs 19.1 of 1⁰) to 4⁰) are met:

14.1. Failure to file an Offering Memorandum ("OM"): Green River Investments distributed bonds on the basis of an incomplete OM which was never filed with the AMF.

14.2. Link of Theofilis with Cape Cove: Theofilis is indirectly a shareholder of 1% of Cape Cove's shares via Groupe Calixa Capital (11833405 Canada inc.).⁵ Clients of Cape Cove have invested over \$1,1M in Green River investments. Green River Investments appears as one of the exempted market products offered by Cape Cove "pour lesquels une diligence raisonnable a été exécutée selon des règles strictes d'évaluation mises en place par une équipe spécialisée".⁶ He carries out alleged due diligence for Cape Cove.

14.3. Link with Gavriil: Gavriil acted as a representative of Green River, via Calixa Capital, in its relations with Cape Cove.⁷

⁴ Exhibit P-38.

⁵ Exhibit P-4.

⁶ Exhibit P-35.

⁷ Exhibit P-34, p. 18.

14.4. Transactions with Green CBD: Theofilis sent Green CBD \$49,925 on March 19, 2021 with the caption "bridge loan" and Green CBD paid back \$50,000 to Theofilis on April 19, 2021. Green River Québec received \$100,000 from Green CBD.

14.5. Use of funds: the funds raised by Green River Investments by the bond distributions were to be advanced to the Operating Entity, Green River Québec:⁸

The Operating Entity provides short-term unsecured consumer loans to sub-prime and near-prime Borrowers in the province of Quebec that have been unable to obtain the conventionally structured loan financing from more traditional sources (e.g., banks, credit unions, etc.). The Operating Entity is an authorized money lender in the province of Quebec, which provides consumer loans to borrowers exclusively through 9337 0112 Quebec Inc. (the "**Broker**") a broker of consumer loans that operates principally under the name 514Loans.

14.6. Financial statements: no financial statements nor notices of gross proceeds have been filed Green River Investments since inception. In order to ascertain whether the funds are being used as intended, yearly financial statements and notices providing for use of gross proceeds must be filed as was expressly provided for in the draft notice and applicable regulations:

The Corporation is required, however, to file its audited annual financial statements within a hundred and twenty days after the end of each of its financial years with the applicable securities commissions and provide a copy thereof to each subscriber in Québec, Ontario, Alberta, Saskatchewan, New Brunswick, and Nova Scotia that subscribes for Bonds pursuant to the "offering memorandum" exemption under s. 2.9 of NI 45-106 (the "OM Exemption"). Additionally, the Corporation is required to provide:

(i) to the abovementioned subscribers, a notice detailing the use of the aggregate gross proceeds raised by the Corporation under the OM Exemption; and

(ii) to subscribers in Ontario, New Brunswick, and Nova Scotia who subscribe for Bonds pursuant to the OM Exemption, a notice within ten days of the occurrence of any of the following events: (a) a discontinuation of the Corporation's business; (b) a change in the Corporation's industry; or (c) a change of control of the Corporation.

14.7. No 45-106 F1 filed: No 45-106F1 filings were made.

⁸ *Ibid*, p. 11.

[15] Green River Investments has no other activities than investing in Green River Quebec all the proceeds of the bonds distributed to investors. Green River Quebec then, allegedly, makes loans as described above.

[16] Cape Cove's site indicates that it invests clients' money in "Green River Finance". Green River Ontario is Green River Finance Canada Inc.

2. The Four Factual Themes

2.1 Preliminary remarks

[17] Before examining in detail the four themes, it must be noted that certain key facts are not contested:

- 17.1. Green River Investments distributed securities, namely bonds. Clients of Cape Cove purchased these bonds and in examining Cape Cove's register of transactions, close to \$1,2M was received from Cape Cove's clients alone.
- 17.2. No final Offering Memorandum has been filed with the AMF by Green River Investments. The version which was provided to investors, if at all, was a draft.
- 17.3. No 45-106F1 Reports of Exempt Distribution were filed.
- 17.4. No financial statements were prepared or filed by Green River Investments since February 2017.
- 17.5. No 45-106F16 forms were filed disclosing the use of the gross proceeds.
- 17.6. Green River Investments has failed to file its last two annual declarations. As a result, it was radiated.

[18] Regardless of any links which may exist between Theofilis, Groupe Calixa Capital, Cape Cove and Calixa Partners, and regardless of Gavriil's involvement, these facts constitute, as provided for at s. 19.1 of the *Act*, ample reasonable grounds that (2^o) that Theofilis has committed multiple offenses under relevant legislation, that (3^o) the management he has exercised is unacceptable in view of generally accepted principles and could endanger the rights of the investors or cause the depreciation of the securities (e.g., the Bonds distributed) and that (4^o) the appointment of the receiver is necessary to protect the public in the context of an investigation under s. 239 (5^o) of the *Securities Act*.⁹

[19] At the heart of the securities legislation lies the prospectus. S. 11 of the *Securities Act* mandates its production for any person intending to distribute securities.¹⁰ It is one of

⁹ CLRQ, c. V-1.1.

¹⁰ CLRQ, c. V-1.1.

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securities' legislation most important components.¹¹ As per s. 43 of the *Securities Act*, certain distributions made to an accredited investor determined by regulation are exempted from this prospectus requirement, as long as the strict conditions set out at s. 2.9 of the *Regulation 45-106 respecting prospectus exemptions* ("*Regulation 45-106*") are met.¹² Amongst these requirements is that an offering memorandum must be delivered to the investor at the moment he or she signs the agreement to purchase the security,¹³ and that the issuer (Green River Investments in this case) must file the offering memorandum with the securities regulatory authority (in this case the AMF) on or before the 10th day after the distribution under the Offering Memorandum.¹⁴ In the present case, the OM was provided to at least one client as a draft.¹⁵ The final version was never filed with the AMF. This is a very serious matter.

[20] Once the issuer distributes their own securities invoking the exemption of s. 2.9 of *Regulation 45-106*, it must file completed reports for such distributions using the Form 45-106F1.¹⁶ This was not done by Green River Investments. Hence, other than through the registers of transactions of Cape Cove¹⁷ or any other selling agent or the certificates filed with Computershare,¹⁸ there is no way to know how many bonds have been indeed distributed. This is also very troubling.

[21] Furthermore, as explained in detail in the Silvermont Judgment, financial statements must be filed within 120 days to the securities regulatory authority (the AMF) and they must be made reasonably available to the securities holder.¹⁹ Since four years, no financial statement have been filed or made available. Contrarily to the case of Silvermont Finance where Tzaferis at least offered some explanations, albeit wholly unsatisfactory, as to his efforts to hire accountants since two years, Theofilis offers no explanation whatsoever, other than saying that this is a matter for a monetary administrative penalty. This argument will be discussed below, but the lack of financial statements is highly alarming.

[22] Furthermore, 45-106F16 forms must accompany the financial statements disclosing in reasonable detail the use of the aggregate proceeds raised by the issuer, unless they have been previously disclosed in such forms.²⁰ Again, the fact that no such forms were filed is disconcerting.

¹¹ *Infotique Tyra inc. v. La Commission des valeurs mobilières du Québec*, 1994 CanLii 5940 (QCCA), p. 17.

¹² CLRQ, c. V-1.1, r. 21.

¹³ *Ibid*, s. 2.9 (2.1) (c) (i).

¹⁴ *Ibid*, s. 2.9 (17).

¹⁵ Exhibit P-39.

¹⁶ CLRQ, c. V-1.1, s. 6.1 and the section dealing with Form 45-106F1 report of exempt distributions.

¹⁷ Exhibit P-44.

¹⁸ Exhibit NC-6.

¹⁹ *Regulation 45-106*, par. 2.9 (17.5).

²⁰ *Ibid*, par. 2.9 (17.19).

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[23] The wanton disregard for these regulatory requirements is more than sufficient reasonable grounds, in of themselves, to order the receivership. Establishing the true nature of Gavriil's involvement, the presence of Green CBD or the representations made to clients by Cape Cove representatives, raise additional concerns and provide colour to the file, but are ultimately unnecessary. Even if Green River were entirely right on every point, it would change nothing in the Court's mind and the Immer Judgment.

[24] The Court must also note that in fact, Theofilis strangely does not attest to the truth of any of the facts in the contestation and modified contestation. His sworn declaration of October 25 and December 9, 2021 contain the two same statements:

1. I am the shareholder and sole director of Defendants 9219-6004 Quebec inc. (d.b.a. Green River Financing), Green River Finance Canada Inc. and Green River Investments inc.
2. All the facts alleged herein are true to the best of my knowledge.

[25] Hence, in truth, all he is attesting to is that he is a shareholder of the three Green River entities and that he is their sole director. Be that as it may, the Court will nevertheless discuss the facts relating to each of these themes, as if Theofilis had sworn that they were true.²¹

2.2 Links between Gavriil and Green River

[26] Green River Investment alleges that at all times, Green River dealt with John Vergados, Cape Cove's compliance agent and an exempt market dealer representative. They did not deal with Gavriil. Vergados signs an affidavit to this effect whereby he states in essence that:

- 26.1. He worked for Calixa Partners from 2018 to April 2020. During this period he "was [Calixa's] representative in its relations with Green River Investments (...) as regards bonds sold by Cape Cove. Calixa Partners was carrying out this work as a "subcontractor" to Cape Cove.
- 26.2. He worked for Cape Cove since July 2020. Since then he has been the representative who handles Cape Cove's now direct relations with Green River Investments.
- 26.3. He never sent subscription forms to either Theofilis or Gavriil.
- 26.4. Gavriil was never a representative of Green River Investments nor did he act as an intermediary between Green River Investments and Cape Cove. It was Vergados who was initially Calixa Partners' and then Cape Cove's representative and the intermediary with Green River Investments.

²¹ He does file a sworn declaration which offers some details on payments on December 14, 2021.

[27] These facts were not known to the Court when it rendered the Immer Judgment. However, the Court does not know if the AMF was aware of them. Indeed, when Tzaferis is examined, he has no idea whether Vergados provided any consulting work to Calixa Partners. Clearly, from the very confusing testimony of Gavriil, Audet and Tzaferis, one can certainly draw the conclusion that Gavriil had a significant involvement with Green River.

[28] In the weeks leading up to the hearing of the contestation, Green River's counsel asked the AMF to disclose the source of information as to the allegation that Gavriil was acting as an intermediary for Green River Investments, as is alleged by the AMF in paragraph 136 of its demand. In response, the AMF referred to the examinations of Audet and of Gavriil.²² Green River was also given access to the video recording of the client M.K.²³

[29] Green River is of the opinion that the Court should have had had access to the full transcripts and video recording. If the AMF had acted with transparency, the Court would have been advised that:

29.1. Gavriil indicated that as a consultant or advisor to Calixa Partners, generally, he would have carried out due diligence work on exempted market issuers and that he would have made favorable recommendations to Cape Cove's product selection committee. However, with regard to Green River Investments specifically, he merely "referred" the issuer, "but [he] did not do the work".

29.2. On the issue of "subscription forms", Audet explained that Cape Cove would have the clients sign these subscription forms by investors and would then transmit them to Gavriil who was designated to act as consultant for the issuer. When asked to indicate for which issuers, he explains that: "Oui, j'ai Agrotech, Malina, au début je crois qu'il était désigné pour Green River au début, mais ça a changé, c'est une nouvelle personne qui est désignée, et puis c'est à peu près ça".

[30] These references to the transcript may indeed suggest that the AMF's statements were perhaps too categorical when dealing with Gavriil's role as regards Green River Investments.

[31] It also appears from the client interview's video recording that, through Cape Cove, she invested \$100,000 in four different exempt market securities. In a December 9, 2019 meeting held at the offices of Cape Cove, Gavriil (who used his pseudonym Sean Gabriel), explained the potential of exempt market securities and indicated to the client he would tell the Cape Cove representative in which securities specifically she should invest. The client explains that it was then Martel who actually chose the four funds into

²² Exhibit D-3.

²³ Exhibit D-6.

which the client invested \$25,000 each, namely: AgroTech, Malina, Silvermont and Green River. Prior to having invested these amounts, the client also had many exchanges with Gavriil as she was handling the press releases of various entities. Over hundreds text messages were exchanged with Gabriel (e.g., Gavriil). At the December 9, 2019 meeting, Gavriil indicated that he was Cape Cove's COO. He gave her a tour of the offices, showed her the art work which he claimed he had chosen as well as his cigar collection. Several representatives of Cape Cove were in attendance at the meeting. Furthermore, after the Corriveau Judgment was rendered, Martel admitted to the client that she was aware of Gabriel's past convictions and that "every medal has two sides".

[32] The recording also shows that Gavriil did not give a specific rate of return for Green River, and that the 14% was indicating as a potential generally for exempt market distributions.

[33] Be that as it may, clearly, even with these nuances, there is still no doubt that:

33.1. Gavriil, alias Sean Gabriel, is very involved in the sale of exempt issuers securities.

33.2. Calixa Capital did indeed have the mandate to manage matters for Green River Investments when it dealt with the trustee, Computershare. In doing so, it is necessarily on behalf of Green River Investments, and not Cape Cove. It is clearly not for the selling agent, Cape Cove, to deal with Computershare. It is for the issuer.

33.3. Vergados must necessarily have received instructions from someone at Calixa Capital to act as he did. The Court can only conclude that it is from Gavriil. Clearly, it was not Tzaferis; he has no clue what activities were being carried out by Calixa Capital, even though he was its sole shareholder and president, at least since April 2020.²⁴ When asked specifically if he knew of John Vergados, he states: "I don't know if he was involved to be honest".²⁵

33.4. Gavriil and Theofilis were co-shareholders in Groupe Calixa Capital Group. The Court does not lend any credibility to Theofilis' statement, which is not supported by a solemn declaration as mentioned above, that "he was never made aware of Groupe Calixa Capital's purchase of Cape Cove shares".²⁶

[34] Hence, when taking all this into account, although they the links are less evident than declared by the AMF, there are nevertheless clear links between Gavriil and Calixa Partners on the one hand and Theofilis and Green River on the other. This level of

²⁴ Exhibit D-26, p. 18 to 38.

²⁵ Ibid., p. 42-43.

²⁶ See paragraph 41 of Green River's modified contestation.

proximity raises further alarm bells. When juxtaposed to the Court's determinative findings in 2.1 above, the Court would still have rendered the Immer Judgment.

[35] That being said, the evidence brought forth by Green River in fact raise a number of fresh concerns.

[36] On the issue of subscription forms, strangely, Green River argues in its outline that "none of the Defendants ever received subscription forms for any bonds sold by Cape Cove". This is a baffling statement. The clients must sign a subscription agreement. This appears on the first page of the draft Green River Investments Offering Memorandum:

If you wish to subscribe for Bonds, you must complete and execute a subscription agreement and all applicable schedules and appendices thereto ("**Subscription Agreement**") and any other required document and send the duly completed documents to the Corporation at the above-mentioned address.

[37] All importantly, it is at that moment, at the latest, that subscribing investors must receive the offering memorandum according to *Regulation 45-106*. If they did not sign a subscription agreement, did they receive an offering memorandum?

[38] Also, the certificates which are ultimately transferred by Vergados to Computershare to carry out payments to the investors raise troubling questions. They indicate that the bonds bear interest at 12,5% per annum for class A bonds and 14.5% for class F bonds. They have a five year maturity date. Green River Finance promises to pay to Computershare as trustee for the bondholders, the interest and the principal at maturity. Vergados sends these certificates to Computershare in batches, over a period stretching from December 9, 2019 to February 21, 2021. The Court notes the following inconsistencies:

38.1. The draft OM indicated that Series A bonds are to be 3-year bonds carrying a 9% fixed interest rate while Series B bonds are 5-year bonds with a 13% fixed rate.²⁷ However, the certificates filed with Computershare do not reflect this. They refer to Series A Bonds which would carry a 12.5% interest and a maturity date of 5 years²⁸ and Series F bonds which carry a 14.5% interest rate and a maturity date of 5 years.²⁹ This is totally incoherent and extremely troubling.

38.2. On December 9, 2019, certificates signed in November 2018, January, March, May and June 2019 are sent to Computershare. However, quarterly interest instalments should have been paid since the signing of the certificates.

38.3. On December 10, 2019, certificates signed in June and July 2019 are sent to Computershare, even though interest should have been paid on a quarterly

²⁷ See Exhibit P-39, p. 1 and 16 (exhibit page numbers).

²⁸ See for example NC-6, p. 8.

²⁹ See for example NC-6, p. 3.

basis, since the signing of the certificates.

38.4. Even though Vergados works for Cape Cove since July 2020, he continues sending documents to Computershare under his Calixa Partners signature.

38.5. Even though Calixa Partners is allegedly sold to Anastosios Moros on January 21, 2021 and is at that point in time a supposed “empty shell” that was not an “operating business and had no clients”, Vergados nevertheless writes to Computershare in February 2021 as Calixa Partners’ executive vice president and sends further certificates.

38.6. In this February 2021 transmission, a certificate is sent for a face value of \$50,000 which is signed on May 10, 2021.³⁰ How can this be?

[39] None of this reassures the Court in the least and convinces the Court even further that a receivership was urgently required.

2.3 Green River Finance

[40] The receivership of Green River Ontario was ordered because its activities appeared to be comingled with those of Green River Investments and Green River, Québec. Cape Cove’s web site lists Green River Finance as one of the exempted issuers. Green River Ontario’s name is Green River Finance Canada Inc.

[41] Green River pleads that it is Cape Cove which has caused this confusion and not they. The issuer is Green River Investments and this is who should have appeared on Cape Cove’s web site. They cannot be responsible for this mistake.

[42] Green River Ontario further makes the statement that it does not operate. However, the corporate records shows that it was incorporated in May 2018 and that it does its annual filings contrarily to Green River Investments.³¹ Furthermore, the Green River Finance website indicates that since 2016, “Green River commence à offrir des crédits non préférentiels plus constructifs aux clients du Québec et de l’Ontario”.³²

[43] Green River also argues that “Green River Finance” is in fact Green River Québec’s trademark and “a corporate attorney has recently been hired to declare the trademark “Green River Finance” as a tradename of Green River Québec”.³³

[44] The points raised are not insignificant. The Court remains convinced however, given the utter lack of reliable financial filings, that receivership of the three Green River entities is required to properly trace the investments and to ensure the investors’

³⁰ Exhibit NC-6, p. 519.

³¹ Exhibit P-42.

³² Exhibit P-43.

³³ Modified contestation, par. 68.

protection. If indeed Green River Ontario has no operations, there is no prejudice resulting from the receivership. If the modified contestations' allegations are true, this will quickly become evident, if it is not already, and the receivership may be lifted.

2.4 The transfers from Green CBD

[45] After having argued that Gavriil plays no role in Green River Investments, Green River goes about explaining why significant transfers are occurring between Green River Finance and Green CBD, which is a creature of Gavriil.

[46] The Corriveau Judgment has placed Green CDB under receivership precisely because the AMF had shown that there were reasonable grounds to believe that the scenarios set out in s. 19.1 of the *Act* were met. In particular, there were grave concerns that Green River CBD was misappropriating funds. It was shown that close to \$6.8M of funds were deposited with Green CBD (much of it diverted from AgroTech and Malina) and that a similar amount was withdrawn. Vountas, Gavriil's wife, who is Green CBD's president, was unable to explain what happened with these funds.³⁴

[47] Hence, the fact that sums are being transferred back and forth between Gavriil, Green River Québec and Green CBD is very concerning *per se*, all the more so as it is Green River Québec which is making the interest payment instalments directly to Computershare. In of themselves, these transfers between Green River Québec and Green CBD, Gavriil or Malina, may not constitute sufficient grounds to order the receivership, but given the failure to file any of the mandatory documentation, which the Court in of itself finds sufficient to justify the receivership, these transfers do increase the Court's level of alarm.

[48] That having been said, the qualifications which Green River puts forth does not reassure the Court in the least. Green River explains that the \$100,000 loan, which apparently Gavriil made personally because the interest payments were paid to him directly,³⁵ was reimbursed. Green River is however only able to provide documentary evidence for a partial reimbursement of \$40,000. In the documents filed, Gavriil, using his pseudonym Sean Gabriel, instructs Theofilis' partner to wire the funds to Malina, not Green CBD, and he sends this email from the following address in June 2019: "sgabriel@calixacapital.com".³⁶ This provides no comfort whatsoever to the Court.

[49] Hence, once again, applying the second approach dictated by the Court of Appel in *Marciano*, even if the Court takes into account that there may be bona fides loans, the Court would still have ordered the Immer Judgment based on the corrected record.

³⁴ Exhibit P-2, par. 118 and 119 which gave rise to the Corriveau Judgment.

³⁵ Exhibits NC-12 and NC-13.

³⁶ Exhibit NC-14.

2.5 The failure to file financial statements

[50] Firstly, Green River argues that the fact that quarterly interest installments are being paid shows that there is no concern regarding the assets. Green River files a series of cheques which show that Green River Québec is paying the quarterly interest installments to Computershare.³⁷ This does not reassure the Court in the least. It does not provide any assurance that the proceeds have been used by Green River Québec for loans having the characteristics set out in the draft Offering Memorandum. Furthermore, the bond certificates sent do not track the interest rates and maturity dates set out in OM.

[51] It is a characteristic of any Ponzi scheme that regular income streams are paid so as not to arouse any suspicions. The British Columbia Court of Appeal has described a Ponzi scheme to be “one where initial investors are paid returns out of money advanced by subsequent investors without any investment ever being made such that the scheme never earns any investment profit”.³⁸ The Court is certainly not stating or concluding that it is in presence of a Ponzi scheme, but it is precisely to alleviate any such concerns that the *Regulation 45-106* mandates the filing 45-106F1 to evidence distribution of bonds, and the filing of financial statements including a balance sheet and the filing of 45-106F16 forms dealing with use of proceeds so that any investor and the AMF can follow the money. By not filing any of these documents, a significant concern lingers which the payment of interest does not eliminate. Furthermore, it is Green River Québec, i.e. the Operating Company, and not the issuer of the bonds, which is paying the interest amounts.

[52] Secondly, Green River argues that the lack of filing of financial statements “is a draconian measure meant to protect the public in exceptional circumstances” and that the “consequences for failing to file certain documents with the AMF are monetary and administrative penalties”. The Court disagrees. As the Court has already stated in the Silvermont Judgment, Green River cannot be allowed to run roughshod over regulatory bulwarks. If Green River had its way, the Court would simply shrug its shoulders at Green River’s unacceptable management practices. The investors will be given no assurances that their assets are not being dilapidated. Such a hands-off approach is clearly not what is asked of courts by the *Act*. Monetary penalties may be appropriate in the medium to long term after a proper trial where Green River and Theofilis can raise a full defense. It does nothing to protect the investors in the meantime.

2.6 Miscellaneous arguments

[53] Green River argues that the regulatory requirements only apply to Green River Investments as an exempt issuer, and not to Green River Québec and Green River Ontario. Hence, given that there is no regulatory wrongdoing on the part of Quebec River Québec and Ontario, no receivership should be ordered.

³⁷ Exhibit NC-8, NC-18 and NC-19.

³⁸ *International Fiduciary Corp., S.A. v. Bryson*, 2014 BCCA 433, par. 2.

[54] These are arguments of the nature of an appeal, and do not fit into the *Marciano* matrix of analysis. Putting this aside, given that all the funds collected by Green River Investments are to be transferred to the Operating Entity, Green River Québec, this argument is without merit. For the receivership to be of any use, the Receiver must be able to follow the money. It is a precondition for Green River Investments to be able to reimburse the bond's principal upon maturity to the investors, that the Operating Entity, Green River Québec, reimburse the sums which Green River Investments has lent to it. The Court has no assurances that it can do so because it has no idea what it did with the funds. Hence, Green River Québec must be put into receivership to ensure that it is properly dealing with the assets and to allow for a proper investigation as to the use of funds.

3. Final remarks

[55] It may well be that proper explanations will be provided by Theofilis which alleviate the concerns giving rise to the receivership.

[56] The Court will certainly not support a useless drawn out receivership which is not in the investors' interest. With Theofilis' cooperation, the Receiver will be able to carry out its investigation and, hopefully, ascertain that the assets are properly managed and that they are accounted for. Section 19.11 of the *Act* allows the Court to modify the powers of the Receiver upon application of an interested party. It can even end the receivership if it is not in the interest of the investors.

[57] The Court will not order payment of costs and this will simply harm the investors in whose interest the Court has ordered the receivership.

FOR THESE REASONS, THE COURT:

[58] **DISMISSES** Green River Investments Inc, 9129-6004 Québec inc. and Green River Finance Canada inc. contestation;

[59] **THE WHOLE**, without costs.



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Hearing date: December 15 and 16, 2021