

Electronically Filed
Jun 04 2019 09:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

— vs. —

BRITISH COLUMBIA SECURITIES
COMMISSION,

Appellee.

Civil Appeal No. 78833

Case Below No. A-18-771407-C
Eight Judicial District Court, Dept. 14
Hon. Adriana Escobar

**DOCKETING STATEMENT CIVIL
APPEAL**

Appellant, Michael Patrick Lathigee ("Lathigee"), hereby submits his Civil Appeal
Docketing Statement.

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Case below:

Judicial District Eight, Department 14
County Clark, Judge Hon. Adriana Escobar
District Ct. Case No. A-18-771407-C

2. Attorney filing this docketing statement:

Jay D. Adkisson, SBN 12546
2505 Anthem Village Drive, Suite E599
Henderson, NV 89052
Ph: 702-953-9617
Fax: 877-698-0678
E-Mail: jay@jayad.com
Counsel for Appellant, Michael Patrick Lathigee

3. Attorney(s) representing respondent(s):

Mr. Kurt R. Bonds, SBN 6228
Mr. Matthew M. Pruitt, SBN 12474
ALVERSON TAYLOR *et al.*,
6602 Grand Montecito Parkway, Suite 200,
Las Vegas, NV 89149
Ph: 702-384-7000
Ph: 702-385-7000
E-Mails: kbonds@alversontaylor.com; mpruitt@alversontaylor.com;
efile@alversontaylor.com
Counsel for Appellee British Columbia Securities Commission

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |

☐ Grant/Denial of
declaratory relief
☐ Review of agency
determination

☐ Original

☐ Modification

☐ Other disposition
(specify)

5. Does this appeal raise issues concerning any of the following:

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court:

None.

7. Pending and prior proceedings in other courts:

None, other than the case below as indicated in ¶ 1.

8. Nature of the action:

Appellee British Columbia Securities Commission ("BCSC") brought a Complaint for Recognition of Foreign-Country Money Judgment against Appellant Michael Patrick Lathigee ("Lathigee"), pursuant to the Nevada Uniform Recognition of Foreign-Country Money Judgments Act ("NURF-CMJA"), NRS 17.700 *et seq.*, and comity. Appellant Lathigee opposed the recognition of the Canadian judgment on the grounds that, as a disgorgement judgment, that judgment was in the nature of a penalty and thus not subject to recognition under either the NURF-CMJA, NRS 17.740(2)(b), or comity.

Upon the motion (by Appellant Lathigee) and countermotion (by Appellee BCSC) for summary judgment, the District Court in a single final judgment granted summary judgment for the Appellee BCSC, thus recognizing the foreign (Canadian) judgment, and denied summary judgment to the Appellant that the foreign judgment not be recognized. From this final judgment, Appellant Lathigee appeals.

9. Issues on appeal:

- (1) Whether a disgorgement judgment is in the nature of a penalty such that it is not subject to recognition under the Nevada Uniform Recognition of Foreign-Country Money Judgments Act ("NURF-CMJA"), NRS 17.700 *et seq.*, and more specifically NRS 17.740(2)(b).
- (2) Whether a disgorgement judgment is in the nature of a penalty such that it is not subject to recognition in Nevada under comity.

10. Pending proceedings in this court raising the same or similar issues:

None.

11. Constitutional issues:

None.

If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

X N/A

☐ Yes

☐ No

If not, explain:

12. Other issues.

Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

X A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Supreme Court of Appeals or retention in the Supreme Court:

The matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(11) insofar as it raises as a principal issue a question of first impression under the Nevada common law as to whether a foreign-country disgorgement order is recognizable under common law notions of comity.

14. Trial:

If this action proceeded to trial, how many days did the trial last? No trial; entire action resolved by summary judgment. Was it a bench or jury trial? N/A

15. Judicial Disqualification:

Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

None.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

May 14, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

17. Date written notice of entry of judgment or order was served:

May 14, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59):

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- | | |
|-------------------------------------|----------------|
| <input type="checkbox"/> NRCp 50(b) | Date of filing |
| <input type="checkbox"/> NRCp 52(b) | Date of filing |
| <input type="checkbox"/> NRCp 59 | Date of filing |

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A.

(c) Date written notice of entry of order resolving tolling motion was served N/A.

Was service by: ☐ Delivery ☐ Mail

19. Date notice of appeal filed:

May 17, 2019

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court entered a final judgment in the case below upon the motion and countermotion for summary judgment of the parties.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant: Michael Patrick Lathigee

Appellee: British Columbia Securities Commission

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: N/A, no other parties.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

All claims were resolved by the District Court's Order of May 14, 2019.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below: None

(b) Specify the parties remaining below: None

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? **X** Yes ☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? **X** Yes ☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

Ex. 1 Complaint For Recognition of Foreign-Country Money Judgment, filed 20 March 2018

Ex. 2 Answer of Defendant Michael Patrick Lathigee, filed 9 April 2018

Ex. 3 First Amended Answer Of Defendant Michael Patrick Lathigee, filed 6 June 2018

Ex. 4 Notice Of Entry Of Order (With Attached Findings Of Fact, Conclusions Of Law and Judgment), filed 14 May 2019

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Michael Patrick Lathigee

Jay D. Adkisson

Name of appellant

Name of counsel of record

June 4, 2019

/s/ Jay D. Adkisson

Date

Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

The following signature certifies that on the 4th day of June, 2019, a full, true, and correct copy of the above and foregoing Docketing Statement Civil Appeal was served electronically and/or deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Appellee, British Columbia Securities Commission, to wit:

Kurt R. Bonds, SBN 6228
Matthew M. Pruitt, SBN 12474
ALVERSON TAYLOR *et al.*
6602 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149
Counsel for Appellee

Lansford W. Levitt, Esq.
ADVANCED RESOLUTION MGT.
6980 S. Cimarron Road, Ste. 210
Las Vegas, NV 89113
Settlement Judge

/s/ Jay D. Adkisson

Jay D. Adkisson

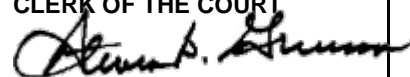
DOCKETING STATEMENT CIVIL APPEAL

EXHIBIT

1

Complaint For Recognition of Foreign-
Country Money Judgment

filed 20 March 2018



ALVERSON, TAYLOR,
MORTENSEN & SANDERS
KURT R. BONDS, ESQ.
Nevada Bar #6228
MATTHEW M. PRUITT, ESQ.
Nevada Bar #12474
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(702) 384-7000
efile@alversontaylor.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

-*_

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

CASE NO.: A-18-771407-C

DEPT. NO.: Department 14

**COMPLAINT FOR RECOGNITION
OF FOREIGN-COUNTRY MONEY
JUDGMENT**

**Exempt From Arbitration Pursuant To
NAR 3(a)**

Amount in Controversy Exceeds \$50,000

COMES NOW Plaintiff BRITISH COLUMBIA SECURITIES COMMISSION (the
Commission”), by and through its attorneys of record, Alverson, Taylor, Mortensen & Sanders, and
complains, avers and alleges as follows:

PARTIES

1. At all times relevant herein, the Commission has been a corporation continued in
British Columbia pursuant to the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the “*Act*”).
The Commission is an agent of government and has the authority under the *Act* to investigate and
prosecute, among other things, violations of the *Act*.

2. The Commission is informed and believes and thereon alleges that, Defendant
MICHAEL PATRICK LATHIGEE (“Lathigee”), is a resident of Las Vegas, Clark County, Nevada.

RELATED NON-PARTIES

3. The following Parties are subject to the Judgment cited to herein; however, they are not believed to be located in Nevada, so at this time Plaintiff does not yet seek to domesticate this foreign country judgment against them. But Plaintiff identifies them for context and reserves the right to amend this Complaint, or bring a new one, should it become necessary to enforce the judgment against these other Parties in Nevada.

4. The Commission is informed and believes and thereon alleges that, Defendant EARLE DOUGLAS PASQUILL (“Pasquill”), is a resident of Vancouver, British Columbia, Canada.

5. FIC FORECLOSURE FUND LTD. is an entity formed under the laws of Canada with its principle place of business in North Vancouver, British Columbia, Canada.

6. FIC REAL ESTATE PROJECTS LTD. is an entity formed under the laws of Canada with its principle place of business in North Vancouver, British Columbia, Canada.

7. WBIC CANADA LTD. is an entity formed under the laws of Canada with its principle place of business in Vancouver, British Columbia, Canada.

STATEMENT OF FACTS

8. In a decision dated July 8, 2014 (the “Liability Findings”), the Commission found that Mr. Lathigee, together with others, perpetrated a fraud, contrary to section 57(b) of the Act when:

- (a) he raised \$21.7 million (CDN) from 698 investors without disclosing to those investors important facts about FIC Group’s financial condition; and
- (b) he raised \$9.9 million (CDN) from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other FIC Group companies, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.

9. On March 16, 2015, the Commission issued a Sanctions Decision arising out of the Liability Findings in the following amounts against the following parties:

- a. FIC REAL ESTATE PROJECTS LTD. \$9,800,000

b. FIC FORECLOSURE FUND LTD. \$9,900,000

c. WBIC CANADA LTD \$2,000.000

d. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC REAL ESTATE PROJECTS LTD., jointly and severally \$9,800,000

e. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC FORECLOSURE FUND LTD., jointly and severally \$9,900,000

f. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, WBIC CANADA LTD., jointly and severally \$2,000,000

10. On April 15, 2015, the Sanctions Decision was registered in the Vancouver Registry as a judgment of the British Columbia Supreme Court in court file no. L-150117, pursuant to section 163 of the *Act* (the “Judgment”).¹

11. The amount of the Judgment payable by Michael Patrick Lathigee, jointly and severally with other defendants, excluding administrative penalties, is \$21,700,000 CDN.

12. The judgment amounts stated herein were granted for disgorgement of funds fraudulently obtained from investors, pursuant to section 161(1)(g) of the *Securities Act*.

FIRST CLAIM FOR RELIEF

(Recognition of Foreign-Country Judgment Pursuant to NRS 17.700-17.820, et. al.)

13. The Commission repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, inclusive, as though each such paragraph were set forth in full in this Claim.

14. The Judgment² attached hereto grants the recovery of a sum of money in favor of the Commission and against the Defendants.

¹ Ex A, Exemplified Judgment.

16. Pursuant to the laws of the province of British Columbia, the Judgment is final, conclusive and enforceable.

17. The Judgment amount claimed in this proceeding is not for taxes, a fine or penalty, or for domestic relations such as support or maintenance.

18. As a further result of Defendants' conduct in failure to pay the Judgment, the Commission had to retain the services of an attorney, for which the Commission has incurred and will continue to incur attorneys' fees and costs.

(Comity)

19. The Commission repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, inclusive, as though each such paragraph were set forth in full in this Claim.

20. Full and fair proceedings having been given Defendants in the courts of British Columbia, after due citation or voluntary appearance by the Defendants, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, the Judgments of such court are entitled to comity by this court.³

21. As a further result of Defendants' conduct in failing to pay the Judgment, the Commission had to retain the services of an attorney, for which the Commission has incurred and will continue to incur attorneys' fees and costs.

² *Id.*

³ See *Hilton v. Guyot*, 159 U.S. 113 (1895).

1 **WHEREFORE**, the Commission prays for judgment against Defendants where applicable as
2 follows:

- 3 1. Entering of the Judgment attached hereto in the State of Nevada;
- 4 2. Entering of Judgment specifically against Michael Patrick Lathigee in the
- 5 amount of \$21,700,000 (CDN);
- 6 3. For the granting of comity toward the Judgment attached hereto;
- 7 4. For pre and post judgment interest at the statutory rate as may be applicable;
- 8 5. For reasonable attorney's fees;
- 9 6. For costs of suit incurred herein; and
- 10 7. For such other and further relief as the Court may deem just and proper in the
- 11 premises.
- 12
- 13

14 DATED this 19th day of March, 2018.

15 ALVERSON, TAYLOR,
16 MORTENSEN & SANDERS

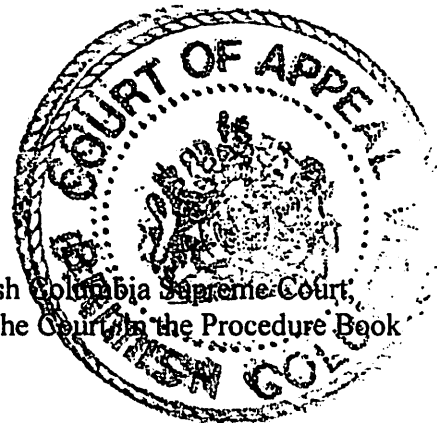


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27 (702) 384-7000
28 Attorneys for Plaintiff

26 N:\kurt.grp\CLIENTS\25500\25513\pleading\Complaint for Recognition of Foreign Judgment - LLB changes MP final.doc

EXHIBIT 1

CERTIFICATE



CANADA, Province of British Columbia

It is hereby certified that, among the records enrolled in the British Columbia Supreme Court, Vancouver Registry, before the Honourable the Chief Justice of the Court, in the Procedure Book there is record of an action, numbered as No. L-150117

BETWEEN:

BRITISH COLUMBIA SECURITIES COMMISSION

Petitioner

and

MICHAEL PATRICK LATHIGEE;
EARLE DOUGLAS PASQUILL;
FIC REAL ESTATE PROJECTS LTD.;
FIC FORECLOSURE FUND LTD., and
WBIC CANADA LTD.

Respondents

1. On March 16, 2015, the Petitioner rendered a decision against the Respondents, pursuant to a hearing under s. 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "**Securities Act**"), under 2105 BCSECCOM 78 (the "**Decision**").
2. Pursuant to section 163 of the *Securities Act*, the Petitioner registered the Decision with the British Columbia Supreme Court, as a judgment of this court (the "**Judgment**").
3. The Decision was entered as a Judgment on April 1, 2015.
4. The Time for appeal has expired and no appeal is pending under s. 167 of the *Securities Act*.
5. Further details if any: None.
6. Particulars:

Amounts Owing, Standing as Judgment by each of the Respondents under S. 161(1)(g) of the *Securities Act*:

REGISTERED
BC COURT of Appeal
18-JAN-2018


FIC Real Estate Projects Ltd.,	\$9,800,000
FIC Foreclosure Fund Ltd.,	\$9,900,000
WBIC Canada Ltd.	\$2,000,000
Michael Patrick Lathigee, Earle Douglas Pasquill, FIC Real Estate Projects Ltd., jointly and severally	\$9,800,000
Michael Patrick Lathigee, Earle Douglas Pasquill, FIC Foreclosure Fund Ltd., jointly and severally	\$9,900,000
Michael Patrick Lathigee, Earle Douglas Pasquill, WBIC Canada Ltd., jointly and severally	\$2,000,000

With no payments being made, and the full amount remaining due on the Judgment, as noted above.

All and singular which premises by the tenor of these presents we have commanded to be certified.

IN TESTIMONY WHEREOF we have caused the Seal of our Court at Vancouver, B.C. to be hereunto affixed.

At Vancouver, B.C. this 23 day of January, 2018.


 A Registrar of the British Columbia Supreme Court, Vancouver Registry
 E. AU
 DEPUTY DISTRICT REGISTRAR
 Clerk of the British Columbia Supreme Court, Vancouver Registry

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

APR 01 2015



FORM 17.2 (RULE 2-2 (3))

L-150117

Court File No.:

Court Registry:

Vancouver Registry

In the Supreme Court of British Columbia

Between

British Columbia Securities Commission

Plaintiff(s)
Petitioner(s)
Applicant(s)
Solicitor(s)

and

Michael Patrick Lathigee, Earle Douglas Pasquill, FIC Real Estate Projects Ltd., FIC
Foreclosure Fund Ltd. and WBIC Canada Ltd.Defendant(s)
Respondent(s)
Client(s)
Defendant(s) by
Counterclaim
Third Party(ies)

REQUISITION

Filed by: British Columbia Securities Commission

(party/ies)

Required: The filing of the attached tribunal award made under the Securities Act, RSBC 1996, c.418, section 183
and Rule 17.1 of the Supreme Court Rules.
(name of Act)

My address for service is:

Address for Service: PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2

Fax number address for service (if any) _____

E-mail address for service (if any) _____

Date 30-Mar-2015

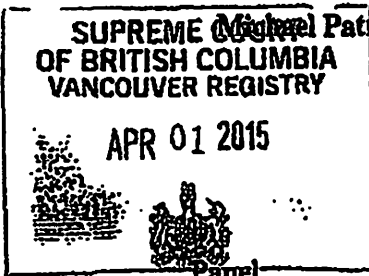
(dd/mm/yyyy)

Signature of Michele Cook☒ filing party☐ lawyer for filing party(ies)Michele Cook, Assistant Secretary to the
Commission
(type or print name)

L-150117

VANCOUVER

Citation: 2015 BCSECCOM 78



Panel

Michael Patrick Lathigee and Earle Douglas Pasquill, FIC Real Estate Projects Ltd., FIC Foreclosure Fund Ltd., WBIC Canada Ltd.

Securities Act, RSBC 1996, c. 418

Hearing

Audrey T. Ho
Judith Downes

Commissioner
Commissioner

Hearing Date

February 13, 2015

Date of Decision

March 16, 2015

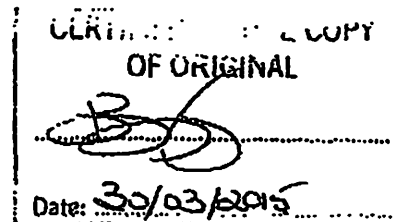
Appearing

Derek Chapman

For the Executive Director

H. Roderick Anderson
Owais Ahmed

For the Respondents



Decision

I Introduction

¶ 1 This is the sanctions portion of a hearing pursuant to sections 161(1) and 162 of the *Securities Act*, RSBC, 1996, c.418. The Findings on liability, made on July 8, 2014 (2014 BCSECCOM 264), are part of this decision. Since the Findings, the panel chair, Vice Chair Brent W. Aitken, retired and did not participate in the sanctions hearing or any deliberations regarding sanctions.

¶ 2 The Findings panel found that:

- a) all the respondents perpetrated a fraud, contrary to section 57(b) of the Act, when they raised \$21.7 million from 698 investors without disclosing to them the important fact of FIC Group's financial condition; and
- b) Michael Patrick Lathigee, Earle Douglas Pasquill and FIC Foreclosure Fund Ltd. perpetrated a second fraud, contrary to section 57(b), when they raised \$9.9 million from 331 investors in FIC Foreclosure for the purpose of investing in foreclosure properties and instead used most of the funds to make unsecured loans to other FIC Group companies.

¶ 6 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

B Application of the Factors

Seriousness of the conduct

¶ 7 The Commission has consistently held that fraud is the most serious misconduct prohibited by the Act. In *Manna Trading Corp Ltd.*, 2009 BCSECCOM 595, the Commission, at paragraph 18, said, "Nothing strikes more viciously at the integrity of our capital markets than fraud."

¶ 8 The magnitude of the fraud perpetrated in this case is among the largest in British Columbia history. The respondents raised \$21.7 million from 698 investors without telling them that the FIC Group had a severe cash flow problem. A relatively small number of potential events could have triggered its insolvency in a very short time frame. Three of the respondents led FIC Foreclosure's 331 investors to believe that the \$9.9 million raised from them would be invested in foreclosure properties and soon. Instead, FIC Foreclosure used most of the funds to make unsecured loans to other FIC Group companies.

the Act. Lathigee and Pasquill were directors and officers of each company at the time.

- b) In June 2007, Lathigee, Pasquill, WBIC and China Dragon entered into a settlement agreement with the Commission and admitted to certain securities law violations. Lathigee agreed to pay a \$60,000 fine and Pasquill agreed to pay a \$30,000 fine.

¶ 19 In addition, on September 2, 2008 (after the fund raising period in this case), the executive director issued a further cease trade order against WBIC. This order was related to inadequate disclosure in WBIC's offering memoranda dated June 1, 2007 and February 1, 2008 regarding: risk factors related to the investments, investments made by WBIC in related companies, and material agreements entered into by WBIC including loan guarantees. Lathigee and Pasquill were directors and officers of WBIC at the time.

Risk to investors and markets

¶ 20 For the reasons discussed below, we find the respondents to be a serious ongoing risk to the capital markets and permanent market bans are warranted.

¶ 21 First, those who commit fraud represent the most serious risk to our capital markets. Here, the fraud is significant.

¶ 22 Second, WBIC and the individual respondents' multiple past infractions show they do not respect securities laws. They were not deterred by orders and sanctions from prior infractions.

¶ 23 Third, Lathigee remained active in the capital markets after his involvement in the FIC Group, co-founding an investment club in Las Vegas with a mandate that resembles the FIC Group's mandate. When talking about his background, he was not forthcoming about his regulatory history.

¶ 24 The executive director submitted a video posted on YouTube in April 2014. This was a year after the issuance of the Notice of Hearing in this case but before the liability hearing.

¶ 25 According to the video, entitled "Experts of Southern Nevada", which is in the format of an interview of Lathigee:

- a) Lathigee now lives in Las Vegas and is a co-founder and leader of an investment club called the Las Vegas Investment Club;
- b) The mandate of the club appears quite similar to the mandate of the FIC Group;
- c) Lathigee talked about the strategy of investing in tax liens and tax deeds, and claimed a lot of success in the past with investing in these liens and deeds;

¶ 32 For the reasons already stated, we conclude that it is not in the public interest to allow the respondents to operate in the capital markets. We find that a permanent market ban against the respondents is necessary to protect the markets and the investing public, subject to two carve-outs:

- a) We are prepared to allow Lathigee and Pasquill to trade for their own accounts through a registered dealer. We do not see any risk to the investing public by doing so.
- b) We are also prepared to allow Lathigee to act as a director and officer of one private issuer whose securities are owned solely by him or by him and his immediate family. He is currently the director and officer of such a company, and we see no risk to the investing public by allowing him to continue. We are not granting this carve-out to Pasquill as he indicated that he has no need for it.

b) *Orders under section 161(1)(g)*

¶ 33 Section 161(1)(g) states that the Commission may order:

“(g) if a person has not complied with this Act, ... that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;”
(emphasis added)

¶ 34 The respondents challenged our authority to make a section 161(1)(g) order (sometimes referred to as a “disgorgement order”) against the individual respondents. They argued that, for section 161(1)(g) to apply, the respondent against whom the order is issued must have obtained a payment or avoided a loss, directly or indirectly, as a result of the contravention of the Act. They said there is no evidence that Lathigee and Pasquill obtained any payment or avoided any loss as a result of their contraventions of the Act.

¶ 35 The respondents argued that to order disgorgement against a respondent who has not obtained any money as a result of a contravention would improperly punish the respondent or, alternatively, wrongly duplicate the purpose of an administrative penalty. They relied on *Manna Trading*, which stated (in paragraph 36) that the purpose behind section 161(1)(g) orders is to remove “the incentive of profiting from illegal misconduct” and to return money obtained by contravening the Act.

¶ 36 The executive director disagreed. He argued that it is clear from a plain reading of section 161(1)(g) that it is not limited to requiring payment of the amount obtained by a respondent. He cited *Oriens Travel & Hotel Management Ltd.* 2014 BCSBCCOM 91 and *Michaels*.

¶ 37 The Commission in *Oriens* and *Michaels* held that an order against a respondent for payment of the full amount obtained as a result of his contravention of the Act is possible without having to establish that the amount obtained through the contravention was obtained by that respondent. We agree.

- ¶ 42 We agree with the principles articulated and approaches taken in the illegal distribution and fraud cases canvassed above. They are even more compelling in cases of fraud. We should not read section 161(1)(g) narrowly to shelter individuals from that sanction where the amounts were obtained by the companies that they directed and controlled.
- ¶ 43 We find we have the authority to order disgorgement against the individual respondents in this case, up to \$21.7 million, the full amount obtained by fraud.
- ¶ 44 We next considered whether we should exercise our discretion to make section 161(1)(g) orders against each respondent and in what amount.
- ¶ 45 With respect to the individual respondents, they submitted that the panel should not make such an order against them even if we have the authority, because they were not personally enriched and they only received reasonable compensation from the FIC Group.
- ¶ 46 The principles articulated in the cited cases apply equally to this case. Lathigee and Pasquill, personally and with the corporate respondents that they directed, committed fraud on close to 700 investors. They were the directing and controlling minds of the corporate respondents. They should not be protected or sheltered from sanctions by the fact that the illegal actions they orchestrated were carried out through corporate vehicles. The amounts obtained from investors need not be traced to them specifically and we find that \$21.7 million was obtained, directly or indirectly, as a result of their individual contraventions of the Act.
- ¶ 47 With respect to the corporate respondents, they obtained the amount raised by them respectively as a result of their individual contraventions of the Act. But, they submitted that a section 161(1)(g) order should not be made against them as they have no ability to pay, and such an order may result in their entering into bankruptcy to the prejudice of the investors.
- ¶ 48 A respondent's ability to pay is not a relevant consideration. Even if it were, the respondents did not provide any evidence that the corporate respondents would have the money to pay the investors if we decline to make a section 161(1)(g) order.
- ¶ 49 Each respondent's misconduct contributed to the raising of the \$21.7 million fraudulently. We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud. Accordingly, we order the respondents to pay to the Commission, jointly and severally, the respective amounts set out in paragraph 62(d) below.
- c) Administrative Penalty*
- ¶ 50 Under section 162 of the Act, where the Commission has determined that a person has contravened a provision of the Act, it "may order the person to pay the commission an administrative penalty of not more than \$1 million for each contravention".

- ¶ 59 Here, the misconduct is greater in magnitude and seriousness than that in *IAC*, and not as egregious as that in *Michaels*. In our view, an administrative penalty of \$21.7 million (in addition to the \$21.7 million disgorgement) against each individual respondent as requested by the executive director is not necessary for meaningful specific and general deterrence. We find \$15 million to be proportionate to the harm done, making it appropriate for the respondents personally and sufficient to serve as a meaningful and substantial general deterrence to others. A \$15 million administrative penalty against each respondent is in line with the penalties ordered in *IAC* and *Michaels*.
- ¶ 60 We do not draw any material distinction between the responsibility that Lathigee and Pasquill have for the misconduct. The administrative penalty should be the same with respect to both of them.
- ¶ 61 We do not find it serves the public interest or any useful purpose to impose an administrative penalty against the corporate respondents. They were controlled by Lathigee and Pasquill and did not act independently of the directions from the two individuals. There is no need for specific deterrence against them. In our opinion, general deterrence can be achieved through administrative penalties against the individual respondents.

IV Orders

- ¶ 62 Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:
- a) *FIC Real Estate Projects Ltd., FIC Foreclosure Fund Ltd., WBIC Canada Ltd. (the "corporate respondents")*
 - i. under section 161(1)(b)(i), all persons permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts of the corporate respondents;
 - ii. under section 161(1)(d)(v), the corporate respondents are permanently prohibited from engaging in investor relations activities;
 - iii. under section 161(1)(c), on a permanent basis, none of the exemptions set out in the Act, the regulations or decisions (as those terms are defined by the Act), will apply to any of the corporate respondents; and
 - iv. subject to paragraph 62(d) below, under section 161(1)(g), the corporate respondents pay to the Commission the amounts obtained, directly or indirectly, as a result of their contraventions of the Act, as follows:
 - FIC Projects - \$9.8 million
 - FIC Foreclosure - \$9.9 million
 - WBIC - \$2 million;
 - b) *Lathigee*
 - i. subject to the exception in paragraph 62(b)(ii)(b) below, under section 161(1)(d)(i), Lathigee resign any position he holds as a director or officer of an issuer or registrant;

d) Section 161(1)(g) payments

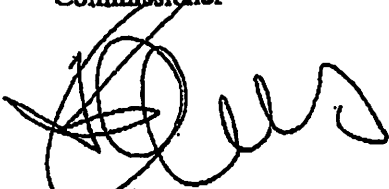
- i. The respondents' respective obligations to pay under paragraphs 62(a)(iv), 62(b)(iv) and 62(c)(iv) above shall not exceed the following:
- (a) \$9.8 million (distributions relating to FIC Projects) – FIC Projects, Lathigee and Pasquill only, on a joint and several basis;
 - (b) \$9.9 million (distributions relating to FIC Foreclosure) – FIC Foreclosure, Lathigee and Pasquill only, on a joint and several basis; and
 - (c) \$2 million (distributions relating to WBIC) – WBIC, Lathigee and Pasquill only, on a joint and several basis.

¶ 63 March 16, 2015

¶ 64 For the Commission



Audrey T. Ho
Commissioner



Judith Downes
Commissioner

DOCKETING STATEMENT CIVIL APPEAL

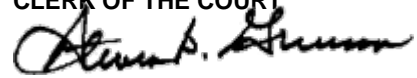
EXHIBIT

2

Answer of Defendant

Michael Patrick Lathigee

filed 9 April 2018



ANS

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Counsel for Defendant,
Michael Patrick Lathigee

STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE, *et al.*

Defendants.

Case No. A-18-771407-C {Dept. 14}

**ANSWER OF DEFENDANT MICHAEL
PATRICK LATHIGEE**

Defendant, Michael Patrick Lathigee ("Lathigee"), by and through his undersigned counsel, hereby submits his ANSWER to the Complaint For Recognition of Foreign-Country Money Judgment filed by Plaintiff, British Columbia Securities Commission ("BCSC"), as follows (paragraph references are to those in the Complaint):

¶ 1. Admits.

¶ 2. Admits.

¶ 3. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 4. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 5. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 6. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 7. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 8. Lathigee admits only to the fact of the "Liability Findings", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof.

¶ 9. Lathigee admits only to the fact of the "Sanctions Decision", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof.

¶ 10. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 11. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

¶ 12. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

FIRST CLAIM FOR RELIEF

¶ 13. Denied as set forth above.

¶ 14. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

¶ 15. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof;

1 further, the Judgment does not contain any finding that Lathigee personally received any money
2 such that he would be subject to disgorgement.

3 ¶ 16. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this
4 averment.

5 ¶ 17. Denied.

6 ¶ 18. Denied, as the BCSC is attempting to enforce a judgment which is non-recognizable under
7 the laws of the Nevada and the United States.

8 **SECOND CLAIM FOR RELIEF**

9 ¶ 19. Denied, as set forth above.

10 ¶ 20. Denied.

11 ¶ 21. Denied, as the BCSC is attempting to enforce a judgment which is not recognizable under
12 the laws of the Nevada and the United States.

13 **FIRST AFFIRMATIVE DEFENSE**

14 The Judgment was originally rendered by a tribunal of the BCSC hearings its own complaint, and
15 therefore was inherently biased and did not comport with Nevada or United States standards of
16 due process.

17 **SECOND AFFIRMATIVE DEFENSE**

18 The Judgment for disgorgement was without any proof or determination that the Lathigee
19 personally received any money, much less \$21.7 million CDN, and therefore is repugnant to the
20 public policy of Nevada and the United States.

21 **THIRD AFFIRMATIVE DEFENSE**

22 The Judgment was rendered in circumstances that raise substantial doubts about the integrity of
23 the BCSC with respect to the Judgment.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 The specific proceeding of the BCSC leading to the judgment was not compatible with Nevada
26 and United States requirements of due process of law.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 The BCSC has delayed this action such that witnesses and documents may not be found, materially
3 harming Lathigee's ability to fully mount a defense, and so therefore the BCSC's action is barred
4 by laches.

5 **DEMAND FOR JURY TRIAL**

6 Lathigee demands that this matter be tried by a jury.

7 **PRAYER**

8 WHEREFORE, Lathigee prays this Court determine that the Judgment is not recognized, that the
9 BCSC take nothing by way of its Complaint, for Lathigee's reasonable attorney's fees and costs
10 associated in his defense of this matter, and for such other and further relief as the Court may deem
11 just and proper under the circumstances.

12 //

13 Respectfully submitted this 9th day of April, 2018, by:

14
15 /s/ Jay D. Adkisson

16 Jay D. Adkisson
17 Counsel for Defendant
18 Michael Patrick Lathigee

19 **CERTIFICATE OF SERVICE**

20 The following signature certifies that on the date of e-filing, a full, true, and correct copy of the
21 above and foregoing document was deposited in the U.S. Mail, with correct first-class postage
22 affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission,
23 to wit:

24 Kurt R. Bonds, SBN 6228
25 Matthew M. Pruitt, SBN 12474
26 ALVERSON TAYLOR *et al.*
27 6602 Grand Montecito Parkway, Suite 200
28 Las Vegas, NV 89149

/s/ Jay D. Adkisson
Jay D. Adkisson

DOCKETING STATEMENT CIVIL APPEAL

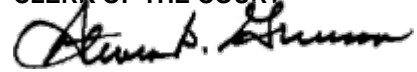
EXHIBIT

3

First Amended Answer Of Defendant

Michael Patrick Lathigee

filed 6 June 2018



AANS

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Counsel for Defendant,
Michael Patrick Lathigee

STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE, *et al.*

Defendants.

Case No. A-18-771407-C {Dept. 14}

**FIRST AMENDED ANSWER OF
DEFENDANT MICHAEL PATRICK
LATHIGEE**

Defendant, Michael Patrick Lathigee ("Lathigee"), by and through his undersigned counsel, hereby submits his ANSWER to the Complaint For Recognition of Foreign-Country Money Judgment filed by Plaintiff, British Columbia Securities Commission ("BCSC"), as follows (paragraph references are to those in the Complaint):

¶ 1. Admits.

¶ 2. Admits.

¶ 3. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 4. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 5. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 6. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 7. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 8. Lathigee admits only to the fact of the "Liability Findings", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof.

¶ 9. Lathigee admits only to the fact of the "Sanctions Decision", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof.

¶ 10. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this averment.

¶ 11. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

¶ 12. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

FIRST CLAIM FOR RELIEF

¶ 13. Denied as set forth above.

¶ 14. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof; further, the Judgment does not contain any finding that Lathigee personally received any money such that he would be subject to disgorgement.

¶ 15. Lathigee admits only to the fact of the "Judgment", which speaks for itself; Lathigee otherwise denies the averments in this paragraph, including the BCSC's characterization thereof;

1 further, the Judgment does not contain any finding that Lathigee personally received any money
2 such that he would be subject to disgorgement.

3 ¶ 16. Lathigee is without knowledge or information sufficient to form a belief as to the truth of this
4 averment.

5 ¶ 17. Admitted that the Judgment amount claimed in this proceeding is not for taxes, or for
6 domestic relations such as support or maintenance; otherwise, denied because the Judgment is in
7 the nature of a fine or penalty which is not subject to recognition.

8 ¶ 18. Denied, as the BCSC is attempting to enforce a judgment which is non-recognizable under
9 the laws of the Nevada and the United States.

10 **SECOND CLAIM FOR RELIEF**

11 ¶ 19. Denied, as set forth above.

12 ¶ 20. Denied. The Judgment is in the nature of a fine or penalty which is not entitled to comity.

13 ¶ 21. Denied, as the BCSC is attempting to enforce a judgment which is not recognizable under
14 the laws of the Nevada and the United States.

15 **FIRST AFFIRMATIVE DEFENSE**

16 The Judgment was originally rendered by a tribunal of the BCSC hearings its own complaint, and
17 therefore was inherently biased and did not comport with Nevada or United States standards of
18 due process.

19 **SECOND AFFIRMATIVE DEFENSE**

20 The Judgment for disgorgement was without any proof or determination that the Lathigee
21 personally received any money, much less \$21.7 million CDN, and therefore is repugnant to the
22 public policy of Nevada and the United States.

23 **THIRD AFFIRMATIVE DEFENSE**

24 The Judgment was rendered in circumstances that raise substantial doubts about the integrity of
25 the BCSC with respect to the Judgment.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 The specific proceeding of the BCSC leading to the judgment was not compatible with Nevada
28 and United States requirements of due process of law.

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FIFTH AFFIRMATIVE DEFENSE

The BCSC has delayed this action such that witnesses and documents may not be found, materially harming Lathigee's ability to fully mount a defense, and so therefore the BCSC's action is barred by laches.

SIX AFFIRMATIVE DEFENSE

The Judgment is clearly denoted as a "sanction" and is otherwise a fine and/or penalty that is not subject to recognition or to comity.¹

DEMAND FOR JURY TRIAL

Lathigee demands that this matter be tried by a jury.

PRAYER

WHEREFORE, Lathigee prays this Court determine that the Judgment is not recognized, that the BCSC take nothing by way of its Complaint, for Lathigee's reasonable attorney's fees and costs associated in his defense of this matter, and for such other and further relief as the Court may deem just and proper under the circumstances.

//

Respectfully submitted this 6th day of June, 2018, by:

/s/ Jay D. Adkisson
Jay D. Adkisson
Counsel for Defendant
Michael Patrick Lathigee

¹ Lathigee does not believe that this allegation is correctly in the nature of an affirmative defense, but rather that the burden is on the BCSC to prove that the Judgment is not in the nature of a fine and/or penalty, but Lathigee lists it as an affirmative defense only in an abundance of precaution.

CERTIFICATE OF SERVICE

The following signature certifies that on the date of e-filing, a full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

Kurt R. Bonds, SBN 6228
Matthew M. Pruitt, SBN 12474
ALVERSON TAYLOR *et al.*
6602 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149

/s/ Jay D. Adkisson
Jay D. Adkisson

DOCKETING STATEMENT CIVIL APPEAL

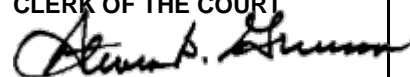
EXHIBIT

4

Notice Of Entry Of Order

(With Attached Findings Of Fact,
Conclusions Of Law and Judgment)

filed 14 May 2019



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DISTRICT COURT

CLARK COUNTY, NEVADA

*

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment and
Order was filed in the above Court on May 14, 2019 a copy of same is attached hereto.

DATED this 14th day of May, 2019

ALVERSON TAYLOR & SANDERS



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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

*

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came before the Court pursuant to Defendant's Motion for Summary Judgment, and Plaintiff's Countermotion for Summary Judgment. At a hearing on December 4, 2018 Matthew Pruitt, Esq. appeared on behalf of Plaintiff, and Jay Adkisson, Esq. appeared on behalf of Defendant.

The Court having reviewed the pleadings and papers on file, being fully advised in the premises, and having heard the arguments of counsel, for reasons stated on the record and good cause appearing therefor, enters the following findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

On March 30, 2018, Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION, commenced this action by filing a Complaint for recognition of foreign country judgment under the Recognition of Foreign-Country Money Judgments (Uniform Act), found at NRS 17.700 et. seq., and under Comity, naming MICHAEL PATRICK LATHIGEE as a Defendant. Defendant subsequently

ALVERSON TAYLOR & SANDERS
LAWYERS
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LAS VEGAS, NEVADA 89149
(702) 384-7000

<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Stipulated Dismissal
<input type="checkbox"/> Motion to Dismiss by Deft(s)

1 answered the Complaint on April 9, 2018, and filed an Amended Answer on June 6, 2018. Defendant
2 filed a Motion for Summary Judgment on October 19, 2018, to which Plaintiff filed its Opposition
3 and Countermotion on November 9, 2018.

4
5 **A. The Underlying Judgment**

6 On March 16, 2015, the British Columbia Securities Commission (the "BCSC") rendered a
7 decision (the "Decision") against Defendant pursuant to a hearing under British Columbia law and
8 pursuant to sections 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "*BC Securities*
9 *Act*").¹ On April 1, 2015, and pursuant to section 163 of the *BC Securities Act*,² the BCSC registered
10 the Decision with the British Columbia Supreme Court, by which the Decision was deemed to be a
11 judgment of the British Columbia Supreme Court (the "Judgment").³ The Judgment was appealed by
12 Defendant, but the appeal was denied by the Court of Appeal for British Columbia on May 31,
13 2017.⁴ The time for appeal has expired and no appeal is pending.⁵

14
15 The Judgment is for disgorgement of \$21,700,000.00 CAD, and corresponds to the
16 \$21,700,000.00 CAD which Defendant was found to have fraudulently raised from 698 investors.⁶
17 Defendant was also assessed with an administrative penalty of \$15 Million CAD, which was also
18 registered with the Supreme Court of British Columbia, but the Plaintiff is not requesting that this
19 related judgment be recognized by this Court.⁷

20
21 ///

22 ///

23 ///

24
25 ¹ Pltf's Opp & CM Ex 1, p.1.

26 ² *Id.*

27 ³ *Id.*

28 ⁴ Pltf's Opp & CM Ex 16, BCSC_001996 & BCSC_002047.

⁵ Pltf's Opp & CM Ex 1, p.1.

⁶ *Id.* at Decision § 2.

⁷ *Id.* at Decision § 62(b) (iv).

a. The Details

In a decision dated July 8, 2014 (the "Liability Findings"), the BCSC found that Defendant, Mr. Lathigee, together with others (often referred to as the FIC Group), perpetrated a fraud, contrary to section 57(b) of the BC Securities Act when:

- (a) he raised \$21.7 million (CAD) from 698 investors without disclosing to those investors important facts about FIC Group's financial condition; and
- (b) he raised \$9.9 million (CAD) from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other members of the FIC Group, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.⁸

On March 16, 2015, the Commission issued the Decision which included disgorgement orders against the following parties in the following amounts:

- a. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC REAL ESTATE PROJECTS LTD., jointly and severally, \$9,800,000
- b. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC FORECLOSURE FUND LTD., jointly and severally, \$9,900,000
- c. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, WBIC CANADA LTD., jointly and severally, \$2,000,000

On April 15, 2015, the Decision was registered in the Vancouver Registry of the British Columbia Supreme Court, pursuant to section 163 of the BC *Securities Act* as a judgment of that Court, under registry file no. L-150117.⁹

The amount of the Judgment ordered to be payable by Michael Patrick Lathigee, jointly and severally with other defendants, excluding administrative penalties, is \$21,700,000 CAD.¹⁰ That

///

⁸ Pltff's Opp & CM Ex 1, Judgment, p.1 § 2.

⁹ Pltff's Opp & CM Ex 1, Judgment.

¹⁰ *Id* at p.9 §§ 43, 46, and 49, and p.13 § 62(d).

amount of the Judgment was granted for disgorgement of funds fraudulently obtained from investors, pursuant to section 161(1)(g) of the BC Securities Act.¹¹ Specifically the tribunal stated:

“We find we have the authority to order disgorgement against the individual respondents in this case, up to \$21.7 million, the full amount obtained by fraud.”¹²

“The amounts obtained from investors need not be traced to them specifically and we find that \$21.7 million was obtained, directly or indirectly, as a result of their individual contraventions of the Act.”¹³

“Each respondent’s misconduct contributed to the raising of the \$21.7 million fraudulently. We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud.”¹⁴

Prior to the proceedings which led to the Judgment, Defendant was served with a Notice of Hearing, dated March 1, 2012, which set forth the allegations and gave a date, time, and location for a hearing.¹⁵ Defendant’s counsel, H. Roderick Anderson of Harper Grey LLP, accepted service of the notice on March 8, 2012, and then appeared for all respondents at the March 20, 2012 hearing.¹⁶ Defendant continued to be represented by such counsel throughout the proceedings of the case.¹⁷ In fact Defendant was afforded at least six days of trial wherein his counsel was able to call and cross-examine witnesses, and present evidence.¹⁸ There is no question regarding personal jurisdiction over Defendant, as Defendant was a resident of British Columbia at all material times during the proceedings.¹⁹

¹¹ See *Id* at p.7 § 34-37.

¹² *Id* at p.9 § 43.

¹³ *Id* at p.9 § 46.

¹⁴ *Id* at p.9 § 49.

¹⁵ Pltf’s Opp & CM Ex 2, Notice of Hearing, BCSC_000054-000067.

¹⁶ Pltf’s Opp & CM Ex 3, Transcript of March 20, 2012 Hearing, at 2:8-12.

¹⁷ See Pltf’s Opp & CM Ex 4, Transcript of April 11, 2012 Hearing, at 1:25-27; Ex 5, Transcript of September 16, 2013 Proceedings, at 0:5-8; Ex 6, Transcript of September 17, 2013 Proceedings, at 1:15-20; Ex 7, Transcript of September 18, 2013 Proceedings; Ex 8, Transcript of September 19, 2013 Proceedings; Ex 9, Transcript of September 20, 2013 Proceedings; Ex 10, Transcript of September 21, 2013 Proceedings; Ex 11, Transcript of September 23, 2013 Proceedings; Ex 12, Transcript of September 24, 2013 Proceedings.

¹⁸ *Id*.

¹⁹ See Pltf’s Opp & CM Declaration of Plaintiff § 9.

1 Ultimately Defendant was found liable for fraud, and the findings on liability were set forth
2 by the BCSC on July 8, 2014.²⁰ Another Notice of Hearing was served on Defendant on October 16,
3 2014, giving a date and time for hearing on sanctions.²¹ A hearing on sanctions was held on February
4 13, 2015, which was again attended by Defendant's counsel.²² The BCSC's decision on sanctions
5 was set forth on March 16, 2015, wherein disgorgement was ordered against Defendant.²³
6

7 Defendant was granted leave to appeal the decisions of the BCSC to the Court of Appeal for
8 British Columbia, with the Court of Appeal, after hearing submission of counsel for Defendant,
9 unanimously dismissing the appeal by order pronounced May 31, 2017, as a result of which the
10 Judgment, including the disgorgement order, remains in full force and effect.²⁴
11

12 As set forth in the Decision, given that the Defendant is "permanently prohibited" from
13 engaging in investment activities in British Columbia, and such other Canadian jurisdictions in
14 which a reciprocal may have been made, he instead has based his operations in Nevada.²⁵ Defendant
15 has been involved in operations of at least 19 entities in Nevada, the latest being "LVIC
16 BLOCKCHAIN AND CRYPTOCURRENCY FUND LLC".²⁶
17

18 **B. Canadian Disgorgement Law**

19 In regard to enforcement of securities law, whereas the U.S. has the federal Securities
20 Exchange Commission (the "SEC"), Canada has thirteen such organizations, one for each province
21 and territory of Canada. The BCSC is the senior provincial securities regulator for the province of
22 British Columbia.
23

24 ²⁰ Pltff's Opp & CM Ex 13, Panel Findings on Liability, BCSC_1512-1577.

25 ²¹ Pltff's Opp & CM Ex 14, Notice of Hearing dated October 16, 2014, BCSC_001692.

26 ²² Pltff's Opp & CM Ex 15, Transcript of February 13, 2015 Hearing.

27 ²³ Pltff's Opp & CM Ex 1, Judgment.

28 ²⁴ Pltff's Opp & CM Ex 16, Appellate Court Decision, BCSC_001996-002047, at BCSC_002047 § 167.

²⁵ See Pltff's Opp & CM Ex 1, Judgment § 62(b).

²⁶ Pltff's Opp & CM Ex 17, Lathigee Corporate Vehicles.

The statute under which the Judgment was granted provides, in s. 161(1)(g), for the judgment debtor to “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.”²⁷ If the Commission recovers money pursuant to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud can submit an application to have such funds distributed to them.²⁸ Pursuant to section 15.1 of the BC *Securities Act*, and Securities Regulation 196-97 enacted under that statute, it is *mandatory* that the Commission distribute disgorgement funds to proper claimants, and it is therefore the Commission’s strict mandate to do so.²⁹ This is illustrated by the fact that the Commission advertises on its website, under a section entitled “Returning Funds to Investors,” the cases which have received funds pursuant to a judgment under section 161(1)(g), and provides guidance to victims on how they can lay claim to such funds.³⁰ In other words, disgorgement orders made under 161(1)(g) of the BC *Securities Act* are not fines or penalties, but are orders for the funds to be disgorged from the judgment-debtor for any amounts obtained, directly or indirectly, as a result of the judgment-debtor’s misconduct, to then by the Commission to repay the individuals harmed by the judgment-debtor’s misconduct.

Further, any remaining funds, after payment of the claims of investors, are to be used by the BCSC for investor education, and not taken in as general revenue or used for operating expenses.

The Commission must follow the claims process set forth by law to distribute the disgorgement funds to proper claimants.³¹ As such, these funds are compensatory in nature.

²⁷ Pltf’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1) (g).

²⁸ *Id* at Part 3, § 15.1.

²⁹ *Id* at Part 3, § 15.1; See Pltf’s Opp & CM Declaration of Plaintiff § 6; Pltf’s Opp & CM Ex 20, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation M244/97, Part 3, § 7.4(6).

³⁰ Pltf’s Opp & CM Ex 21, BCSC Website, “Returning Funds to Investors,” accessed August 30, 2018.

³¹ Pltf’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 418, Part

Penalties and fines were dealt with separately by the orders made by the Commission's panel. Defendant has an additional judgment against him in the amount of \$15 Million CAD for administrative penalties.³² These fines and penalties are set forth separately from the portion of the Judgment for disgorgement, for which the Commission seeks recognition before this Court. Plaintiff's expert has stated unequivocally that disgorgement is a remedy, and not a penalty.³³ Canadian case law, and particularly case law in British Columbia, holds that disgorgement is not a penalty.³⁴ In *United States (Securities Exchange Commission) v. Peever*, the British Columbia Court recognized a US SEC disgorgement order, finding that evidence of the SEC's policy to distribute proceeds of the judgment to injured investors, even when not strictly required to do so, was enough to recognize the judgment and not deem it a penalty for purposes of recognition.³⁵

CONCLUSIONS OF LAW

A. Motion for Summary Judgment Standard.

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action."³⁶ Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, it enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried."³⁷ "Summary judgment is appropriate if, when viewed in the light most

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18, § 161(1)(g).

³² Pltf's Opp & CM Ex 1, Judgment, §§ 18(b), 62(b)(iv-v(erroneously labeled iv)).

³³ Pltf's Opp & CM Ex 30, Plaintiff's Expert's Report p. 3-4.

³⁴ Pltf's Opp & CM Ex 22, *US (SEC) v. Peever*, 2013 BCSC 1090, §§ 27-29.

³⁵ *Id.*

³⁶ *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 123 P.3d 748, 750 (Nev. 2005).

³⁷ *Id.*

1 favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and
2 the moving party is entitled to judgment as a matter of law.”³⁸

3 Parties resisting summary judgment cannot stand on their pleadings once the movant has
4 submitted affidavits or other similar materials.³⁹ Though inferences are to be drawn in favor of the
5 non-moving party, an opponent to summary judgment must show that he can produce evidence at
6 trial to support his claim.⁴⁰ The Nevada Supreme Court has rejected the “slightest doubt” standard,
7 under which any dispute as to the relevant facts defeats summary judgment.⁴¹ A party resisting
8 summary judgment “is not entitled to build a case on the gossamer threads of whimsy, speculation,
9 and conjecture.”⁴² Rather, the non-moving party must demonstrate specific facts as opposed to
10 general allegations and conclusions.⁴³ Indeed, an opposing party “is not entitled to have [a] motion
11 for summary judgment denied on the mere hope that at trial he will be able to discredit movant’s
12 evidence; he must at the hearing be able to point out to the court something indicating the existence
13 of a triable issue of fact.”⁴⁴

14
15
16 **B. British Columbia Disgorgement Judgments Must be Recognized Pursuant to**
17 **NRS 17.700 – 17.820**

18 The Judgment in issue was pronounced by the BCSC, and recognized as a judgment of the
19 British Columbia Supreme Court and, subsequently upheld on appeal. The Judgment is, in all
20 respects, a foreign-country judgment, being a judgment of one of the superior courts of Canada.
21

22
23 ³⁸ NRCP 56(c); *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 710 (Nev. 2014).

24 ³⁹ NRCP 56(e).

25 ⁴⁰ *Van Cleave v. Kietz-Mill Minit Mart*, 633 P.2d 1220, 1222 (Nev. 1981).

26 ⁴¹ *Wood v. Safeway*, 121 P.3d at 1031.

27 ⁴² *Collins v. Union Fed. Savings & Loan*, 622 P.2d 610, 621 (Nev. 1983).

28 ⁴³ *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002); *Wayment v. Holmes*, 912 P.2d 816, 819 (Nev. 1996).

⁴⁴ *Hickman v. Meadow Wood Reno*, 617 P.2d 871, 872 (Nev. 1980); see also *Aldabe v. Adams*, 402 P.2d 34, 37 (Nev. 1965) (“The word ‘genuine’ has moral overtones; it does not mean a fabricated issue.”); *Elizabeth E. v. ADT Sec. Sys. W.*, 839 P.2d 1308, 1310 (Nev. 1992).

1 A Nevada court “shall recognize a foreign-country judgment,” to which NRS 17.700 to
2 17.820 apply, except as provided for under NRS 17.750 sections 2 and 3.⁴⁵ NRS 17.740 sets forth the
3 applicability of NRS 17.700 to 17.820. It states that such statutes apply to the extent that the
4 judgment “(a) Grants or denies recovery of a sum of money; and (b) Under the law of the foreign
5 country where rendered, is final, conclusive and enforceable.”⁴⁶ Further, it provides that such statutes
6 do not apply to the extent that the judgment is “(a) A judgment for taxes; (b) A fine or other penalty;
7 or (c) A judgment for divorce, support or maintenance or other judgment rendered in connection with
8 domestic relations.”⁴⁷

9
10 Defendant admits in its responses to Plaintiff’s Requests for Admission numbers 1-4, that the
11 Judgment, against Defendant is final, conclusive and enforceable under the laws of Canada, that the
12 time for appeal has expired, that no payments have been made, and that the Judgment is not for taxes
13 or domestic relations.

14
15 In addition to Defendant’s admissions, the Commission has clearly proven that the Judgment
16 grants the recovery of a sum of money, and that under the laws of British Columbia specifically, and
17 Canada generally, the Judgment is final, conclusive and enforceable.⁴⁸ The certificate of the British
18 Columbia Supreme Court, exemplifying the Judgment, states that:

19
20 “The Decision was entered as a Judgment on April 1, 2015.”⁴⁹

21 “The Time for appeal has expired and no appeal is pending under s. 167 of the
22 *Securities Act*.”⁵⁰

23 “With no payments being made, and the full amount remaining due on the Judgment,
24 as noted above”⁵¹

25 ⁴⁵ NRS 17.750(1).

26 ⁴⁶ NRS 17.740(1).

27 ⁴⁷ NRS 17.740(2).

28 ⁴⁸ See Pltf’s Opp & CM Ex 1, Judgment.

⁴⁹ Pltf’s Opp & CM Ex 1, Judgment, § 3.

⁵⁰ *Id* at § 4.

⁵¹ *Id* at § 6.

1 Additionally, the Judgment is not a judgment for taxes or domestic relations as
2 acknowledged by Defendant's First Amended Answer.⁵²

3 **a. Defendant Waived or Withdrawn all of His Affirmative Defenses to**
4 **Recognition of Foreign Country Judgment under NRS 17.700 – 17.820,**
5 **Except for the Argument that the Judgment is a Penalty**

6 The only grounds for denying recognition of a foreign-country judgment to which the
7 Recognition of Foreign-Country Money Judgments act is applicable are found in NRS 17.750(2) and
8 (3):

9 “2. A court of this State may not recognize a foreign-country judgment if:

- 10 (a) The judgment was rendered under a judicial system that does not provide
11 impartial tribunals or procedures compatible with the requirements of due process of
12 law;
13 (b) The foreign court did not have personal jurisdiction over the defendant; or
14 (c) The foreign court did not have jurisdiction over the subject matter.”

15 “3. A court of this State need not recognize a foreign-country judgment if:

- 16 (a) The defendant in the proceeding in the foreign court did not receive notice
17 of the proceeding in sufficient time to enable the defendant to defend;
18 (b) The judgment was obtained by fraud that deprived the losing party of an
19 adequate opportunity to present its case;
20 (c) The judgment or the cause of action on which the judgment is based is
21 repugnant to the public policy of this State or of the United States;
22 (d) The judgment conflicts with another final and conclusive judgment;
23 (e) The proceeding in the foreign court was contrary to an agreement between
24 the parties under which the dispute in question was to be determined otherwise than
25 by proceedings in that foreign court;
26 (f) In the case of jurisdiction based only on personal service, the foreign court
27 was a seriously inconvenient forum for the trial of the action;
28 (g) The judgment was rendered in circumstances that raise substantial doubt
about the integrity of the rendering court with respect to the judgment; or
(h) The specific proceeding in the foreign court leading to the judgment was
not compatible with the requirements of due process of law.”

“4. A party resisting recognition of a foreign-country judgment has the burden
of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.”

⁵² Pltff's Opp & CM Ex 18, Defendant's First Amended Answer § 17.

Judging from Defendant's affirmative defenses, Defendant previously rested its defense on §§ 2(a), 3(g) and 3(h). Defendant, however, has waived or withdrawn each of these defenses. In response to Plaintiff's Request for Admission No. 11, Defendant states "Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty..."⁵³ Defendant further admits that he was represented by counsel in the proceedings against him, that multiple hearings were held in the proceedings against him, and that he received notice of those hearings.⁵⁴ Defendant further expressly withdraws any claim that the proceedings were inherently biased, that the judgment was rendered in circumstances raising doubts about the integrity of the BCSC, that the proceedings were not compatible with US due process, and that the BCSC delayed this action.⁵⁵

Through its discovery responses, Defendant has waived, or withdrawn, its first, third, fourth, and fifth affirmative defenses. Defendant even waived his second affirmative defense through his Motion for Summary Judgment, which states, "Defendant Lathigee asserts but a single defense that is common to both the NUF-CMJRA and to comity, which is that the Disgorgement Order is in the nature of a fine or penalty."⁵⁶ This leaves only one affirmative defense, that the Judgment "is clearly denoted as a 'sanction' and is otherwise a fine and/or penalty that is not subject to recognition or to comity."⁵⁷

b. Plaintiff's Judgment is not a Penalty

The Restatement (Second) of Conflict of Laws states, "A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned." Plaintiff has a valid

⁵³ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Response No. 11.

⁵⁴ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Responses No. 12-14.

⁵⁵ See Pltff's Opp & CM Ex 29, Def's Rsps to Pltff's ROGs, Responses No. 2-4, & 6.

⁵⁶ Def's MSJ, Memorandum 1:21-23.

1 disgorgement judgment rendered by the courts of British Columbia Canada after a fair trial in a
2 contested proceeding.

3 The US Supreme Court, in *Kokesh v. S.E.C.*, adopted the position of the Restatement (Third)
4 of Restitution and Unjust Enrichment § 51, Comment a, p. 204 (2010), by holding that
5 “disgorgement is a form of ‘[r]estitution measured by the defendant’s wrongful gain.’”⁵⁸ The
6 Restatement (Fourth) of Foreign Relations Law of the United States makes clear that “A judgment
7 in favor of a foreign state awarding restitution for the benefit of private persons is not penal...” As
8 this is a case of first impression in Nevada on this subject matter, and is believed to be so also in the
9 United States, this Court adopts the law of Section 489 cmt. 4 of the Restatement (Fourth) of
10 Foreign Relations Law of the United States as the law of Nevada, and holds that disgorgement
11 judgments are restitutionary under US law and *Kokesh*, and are not penal for purposes of
12 recognition of foreign judgments.

13 In particular this Court finds that the British Columbia judgment sought to be recognized by
14 this Court is not penal, but is a form of restitution, as the funds collected under British Columbia
15 disgorgement judgments are mandated by law to become subject to a claims process in which the
16 judgment funds are used to restore the losses of victims affected by the fraud on which the judgment
17 is based. The statute under which the judgment was granted provides for the judgment debtor to
18 “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a
19 result of the failure to comply or the contravention.”⁵⁹ If the commission receives money pursuant to
20 a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud
21 can submit an application to have such funds distributed to them.⁶⁰ Pursuant to section 15.1 of the
22
23
24
25

26 ⁵⁷ Pltff’s Opp & CM Ex 18, Def’s Amended Answer, p. 3-4.

27 ⁵⁸ *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1640 (2017).

28 ⁵⁹ Pltff’s Opp & CM Ex 2, Canada Securities Act [RSBC 1996] Chapter 418, Part 18,
§ 161(1)(g).

⁶⁰ *Id* at Part 3, § 15.1.

1 BC *Securities Act*, and Securities Regulation 196-97, it is *mandatory* that the BCSC distribute
2 disgorgement funds to proper claimants, and it is therefore the BCSC's strict policy to do so.⁶¹
3 Whatever the "purpose" of the law, clearly the effect is to compensate victims – something the law
4 mandates by its terms.
5

6 In this particular case, Plaintiff's judgment is dollar for dollar a disgorgement of amounts
7 actually held by British Columbia's securities regulator to have been fraudulently taken from
8 individual investors. The effect of the disgorgement judgment then is to take back those funds
9 actually taken from individual investors, and to grant restitution to victims through the legally-
10 mandated claims process.
11

12 ***Kokesh***

13 While this Court has considered the *Kokesh* court's defining disgorgement as penal for the
14 purposes of a US statute of limitations period, this part of *Kokesh* applies only to US disgorgement,
15 as the *Kokesh* court specifically stated "We hold that **SEC disgorgement** constitutes a penalty."⁶²

16 While *Kokesh* is persuasive coming from the US Supreme Court, this Court does not believe
17 *Kokesh* is binding or even on point for this particular matter, because the *Kokesh* court limited its
18 application to SEC disgorgement, and the case was strictly in regard to a statute of limitations
19 matter. While in *Kokesh* the statute of limitations matter was a black and white test of whether the
20 cause of action would be held to a certain time frame requirement, the issue of a judgment being a
21 penalty for purposes of recognizing foreign country judgments is a very different analysis, wherein
22 this Court recognizes that "Enforcement of a judgment affording a private remedy is not barred ...
23
24

25 ///

26
27 ⁶¹ *Id* at Part 3, § 15.1; See Pltf's Opp & CM Declaration of Plaintiff § 6; Pltf's
28 Opp & CM Ex 3, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation
M244/97, Part 3, § 7.4(6).

⁶² *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1642 (2017) (*emphasis added*).

1 because it is joined with, or awarded in the same proceeding as, a judgment the enforcement of
2 which would be barred..." such as a penalty.⁶³

3 In other words, the *Kokesh* court effectively held that because the judgment in that case was
4 partially penal, it was held to a particular statute of limitations, but in the analysis of recognizing
5 foreign judgments, a partially penal purpose is not dispositive, as the penal portion of a judgment
6 can be separated from the restitution portion of the judgment, and the restitution portion given full
7 recognition. This Court holds that the entire \$21.7 Million judgment sought to be recognized in this
8 case is restitution under US and Nevada law, and should be recognized in its entirety.
9

10 *Huntington*

11 This Court has also considered the decision in *Huntington v. Attrill*.⁶⁴ *Huntington* did not
12 involve a disgorgement judgment, or even a foreign country judgment, but it instead determined that
13 the Full Faith and Credit Clause does not apply to penal judgments.⁶⁵ So it did not say that courts
14 could not recognize penal judgments, but instead decided only the constitutional question of whether
15 courts were *required* to recognize them under the Full Faith and Credit Clause.⁶⁶ While *Huntington*
16 does not apply to foreign country judgments, the court developed a test for whether a sister-state
17 judgment is penal, determining that the penal status of such a judgment "depends upon the question
18 whether its purpose is to punish an offense against the public justice of the state, or to afford a
19 private remedy to a person injured by the wrongful act."⁶⁷
20

21 While *Huntington's* test is not binding on this case, because it does not apply to foreign
22 country judgments, the test still leads to a conclusion that a British Columbia disgorgement judgment
23
24

25 ⁶³ Restatement (Fourth) of Foreign Relations Law of the United States § 489
26 cmt. d.

27 ⁶⁴ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

28 ⁶⁵ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 538
(2011).

⁶⁶ *Id.*

⁶⁷ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

1 is not a penalty. As discussed at length herein and in Plaintiff's Countermotion, such a judgment's
2 purpose is not to punish an offense against the public justice of the state, but to disgorge the
3 Defendant of his ill-gotten gains, and then those gains are mandatorily returned to the claimants who
4 are Defendant's victims.⁶⁸

5
6 The British Columbia disgorgement judgment does not perfectly fall into the *Huntington*
7 test, but it is much more similar, for the purpose of this analysis, to a private remedy than a
8 punishment. The funds from disgorgement orders are strictly required to compensate victims and
9 not go into the general operating revenue.⁶⁹ This is different from administrative penalties which
10 don't compensate victims.⁷⁰

11
12 The more appropriate test to follow in this case is that which is set forth by the Restatement
13 (Fourth) of Foreign Relations of the United States, which states that when the judgment (1) is in
14 favor of a foreign state, and (2) results in restitution for the benefit of private persons, then it is not a
15 penalty.⁷¹

16 *Oakland*

17
18 This Court has also considered the decision in *City of Oakland v. Desert Outdoor*
19 *Advertising, Inc.*⁷² The *Oakland* case focused on a judgment with a strictly public purpose where no
20 private injury was had, and no right to compensation for individuals existed. Indeed, the judgment
21 in the *Oakland* case came from a municipal code violation for the erection of a billboard determined
22 to be a public nuisance.⁷³ Plaintiff's judgment is not for some public nuisance, but for the
23 disgorgement of stolen funds and profits, and a return of such funds to Defendant's victims.

24
25 ⁶⁸ See Pltf's Reply Declaration of Plaintiff § 4.

26 ⁶⁹ See Pltf's Reply Declaration of Plaintiff § 5.

27 ⁷⁰ *Id.*

28 ⁷¹ Restatement (Fourth) of Foreign Relations Law of the United States § 489 n. 4;
see also § 489(b).

⁷² *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534
(2011).

Plaintiff's judgment is not the result of some municipal code prescribing penalties and fines, like a traffic ticket or zoning violation, but is a judgment based on important securities regulations which provide disgorgement which results in those funds being available to victims of the fraud.⁷⁴

C. British Columbia Disgorgement Judgments May be Recognized Pursuant to Principles of Comity

NRS 17.820 states that "NRS 17.700 to 17.820, inclusive, do not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of NRS 17.700 to 17.820, inclusive." Under that authority, this Court finds good cause for recognizing Plaintiff's judgment under both NRS 17.700 – 17.820, and comity.

A Court may grant comity in recognizing a foreign country judgment even if the judgment is a tax, fine or penalty, as nonrecognition in such cases is permitted but not required.⁷⁵

"[C]omity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect."⁷⁶

"A court applying the principle of comity should consider the 'duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction.'"⁷⁷

Comity is a rule of practice, convenience, and expediency, rather than rule of law, that courts have embraced to promote cooperation and reciprocity with foreign lands.⁷⁸ Principles of Comity are embraced by both Canada and the United States, in each of their respective Provinces and States, as the two close countries endeavor to promote cooperation and offer reciprocity between two similar legal systems.

⁷³ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

⁷⁴ See Pltff's Reply Declaration of Plaintiff § 4.

⁷⁵ Restatement (Third) of Foreign Relations Law of the United States, § 483 cmt a ("Nonrecognition not required but permitted").

⁷⁶ *In re Chao-Te*, 2015 WL 3489560, p.2 (Nev.) (citing *Miannecki v. Second Judicial Dist. Court*, 99 Nev, 93, 98, 658 P.2d 422, 424-25 (1983)).

⁷⁷ *Id.*

⁷⁸ *Mujica v. AirScan, Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d

1 While Courts should consider whether due process was given in their decision to grant
2 comity, such requires only that the basic requisites for due process are necessary – including notice
3 and a hearing.⁷⁹ The seminal comity case, *Hilton v. Guyot*, declares:

4 “[Comity] contributes so largely to promote justice between individuals, and to
5 produce a friendly intercourse between the sovereignties to which they belong, that
6 courts of justice have continually acted upon it as a part of the voluntary law of
7 nations.”⁸⁰

8 “Where there has been opportunity for a full and fair trial before a foreign court of
9 competent jurisdiction, conduction the trial on regular proceedings, after due citation
10 of voluntary appearance of the defendant, and under a system of jurisprudence likely
11 to secure an impartial administration of justice between the citizens of that country
12 and those of other countries, and there is nothing to show either prejudice in the
13 court, or in the system of laws under which it was sitting, or fraud in procuring the
14 judgment, or any other special reason why the comity of the United States should not
15 allow it full effect, the merits of the case should not, in an action brought in this
16 country on the judgment, be tried afresh, as on a new trial or an appeal, upon the
17 mere assertion of a party that the judgment was erroneous in law or in fact.”⁸¹

18 Canada and the U.S. have a long history together as two nations which sprung up in close
19 proximity at similar times. The two nations’ legal systems are largely similar, as they both arose from
20 British and European jurisprudence.

21 The SEC and securities commissions of each of the Provinces, including the BCSC, often
22 work together, as the nature of the proximity and relations of the two countries makes it easy for
23 fraud to move between the countries.⁸² The U.S. and many provinces of Canada are actually parties
24 to a Memorandum of Understanding, to which the SEC and BCSC are signatories, which provides
25 that the “Authorities will provide the fullest mutual assistance,” “to facilitate the performance of
26 securities market oversight functions and the conduct of investigations, litigation or prosecution...”⁸³

27 Cir.1997) (quoting *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435,
28 440 (3d Cir.1971)).

⁷⁹ *Society of Lloyd’s v. Hudson*, 276 F.Supp.2d 1110, 1112 (D. Nev. 2003).

⁸⁰ *Hilton v. Guyot*, 159 U.S. 113, 165 (1895).

⁸¹ *Id* at 123.

⁸² See *S.E.C. v. Lines*, 2009 WL 2431976, p.1 (S.D.N.Y.).

⁸³ Pltf’s Opp & CM Ex 24, Memorandum of Understanding between SEC and BCSC.

Canadian courts, including the British Columbia Courts, have upheld SEC disgorgement judgments on multiple occasions.⁸⁴ One of the more recent cases, *United States (Securities Exchange Commission) v. Peever*, recognized, and permitted enforcement of, an SEC disgorgement judgment, even though the defendant alleged that its purpose was partially penal in nature.⁸⁵ The same Court also gave effect to an SEC disgorgement judgment in *United States (Securities and Exchange Commission) v. Cosby*, holding that “as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.”⁸⁶ That Court held again, in *United States of America v. Shull*, that the disgorgement order sought to be enforced by the SEC in Canada was “neither a penal sanction nor a taxation measure.”⁸⁷

It is critically important that we maintain our good relations and ties with Canada by giving effect to its Province's judgments, as it gives effect to ours, especially those meant to provide some restoration to the victims of securities fraud. “International law is founded upon mutuality and reciprocity.”⁸⁸ If we want Canada's Provinces to continue to recognize our securities judgments, then we need to recognize theirs.

If we fail to uphold Canada's Provinces' securities judgments, and more particularly, disgorgement judgments, then they may very likely refuse to uphold ours, and in that situation the

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⁸⁴ See Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII); Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.); and Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁵ Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII).

⁸⁶ Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁷ Pltf's Opp & CM Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.).

⁸⁸ *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).

1 citizens of both countries are worse off. U.S. and Nevada citizens who are victimized by securities
2 fraud would be less likely to receive any recompense.

3 **ORDER**

4 Based on the foregoing; the Court finding that it has jurisdiction over the subject matter and
5 the parties hereto, and being otherwise fully advised in the premises and good cause appearing;
6 hereby enters this Judgment.

7
8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that PLAINTIFF'S
9 Countermotion for Summary Judgment is **GRANTED**.

10 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that
11 DEFENDANT'S Motion for Summary Judgment is **DENIED**.

12 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's
13 Judgment in the amount of \$21.7 Million CAD, is hereby recognized and entered, and is fully
14 enforceable in the State of Nevada.

15 **IT IS ORDERED AND ADJUDGED** that the plaintiff, the BRITISH COLUMBIA
16 SECURITIES COMMISSION, recover of the defendant MICHAEL PATRICK LATHIGEE the sum
17 of \$21,700,000.00 CAD plus interest on that sum at the statutory rate pursuant to NRS 17.130 or, at
18 the option of the judgment debtor, the number of United States dollars which will purchase the
19 Canadian Dollar with interest due, at a bank-offered spot rate at or near the close of business on the
20 banking day next before the day of payment, together with assessed costs of \$1,173.39 United States
21 dollars.
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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that trial deadlines
2 currently on calendar shall be vacated.

3 DATED this 14th day of May, 2018.
4

5 
6 DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 ALVERSON TAYLOR & SANDERS

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