

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

vs.

BRITISH COLUMBIA SECURITIES
COMMISSION,

Respondent.

Case No.: 78833

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Appeal from the Eighth Judicial District
Court, the Honorable Adriana Escobar
Presiding

RESPONSE TO RESPONDENT'S
NOTICE OF SUPPLEMENTAL AUTHORITY

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Respondent, British Columbia Securities Commission (“BCSC”), improperly offers argument in its notice of supplemental authority in violation of NRAP 31(e), which requires, “The notice shall further state concisely and without argument the legal proposition for which each supplemental authority is cited.” To the extent that the Court considers the arguments offered by BCSC, Appellant, Michael Patrick Lathigee (“Lathigee”) offers the following response.

Summarizing the holding of the opinion in *Liu v. SEC*, 591 U.S. ____, 2020 WL 3405845 (2020), the “Supreme Court ultimately held that § 78u(d)(5) permits disgorgement as an equitable remedy when limited to a wrongdoer’s net profits.” Respondent’s Notice of Supplement Authority (“RNSA”) at 4.

However, BCSC does not point to any record evidence that Lathigee ever received such net profits, and this matter is otherwise addressed in Appellant’s Reply Brief at Part II.K., at 28–30. It is respectfully suggested that particular attention should be paid to the statement by BCSC’s own expert witness, Mr. Gordon R. Johnson, following his review of the record:

“Certainly, I agree the impact of the remedy is significant in that the order in question requires Mr. Lathigee to pay \$21,700,000 Canadian *without proof that Mr. Lathigee personally received that amount.*” 1 JAX132 (emphasis added).

Although a long, confusing and frankly torturous read, the decision of the BCSC cited as 2014 BCSECOM 264 starting at 8 JAX755 illustrates Lathigee’s wrong to be of the “robbing Peter to pay Paul” variety. That is, the FIC Group’s real estate projects went underwater following the 2007–2008 crash in the real estate markets, and new money that was raised from new investors for new real estate projects (and to buy distressed properties) ended up being used to bail out underwater projects and thus save the investments of the old investors. But, the bottom line being that the record is bereft of evidence that Lathigee himself received any “net profits” as a result of these financial transactions, at least of the type described by Justice Sotomayor in *Liu*. Therefore, *Liu* does not support the BSCS’ position in this appeal.

DATED this 7th day of July, 2020

Adkisson PLLC

/s/ Jay D. Adkisson

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/s/ Micah S. Echols

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **RESPONSE TO RESPONDENT’S NOTICE OF SUPPLEMENTAL AUTHORITY** with the Nevada Supreme Court on the 7th day of July, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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