Court File No. CV-20-00641059-00CL
Court File No. CV-20-00641372-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

OBJECTION

To

“Representative Counsel’s fees and taxes in the aggregate amount of $6,000,000”

Re: the Settlement surrounding the winding up of PACE Securities, PACE Financial, and First Hamilton Holdings, et al

October 4, 2021 **submitted by: Wayne Gould**

NOTICE OF OBJECTION

TO: info.pacesecuritieslitigation@paliareroland.com

RE: PACE SECURITIES CORPORATION—ALLOCATION OF SETTLEMENT FUNDS

I, THE UNDERSIGNED INVESTOR in preferred shares of Pace Financial Limited, acknowledge that pursuant to the direction of the Honourable Justice Conway dated August 25, 2021, Investors wishing to object to the relief sought by Representative Counsel at the hearing on October 18, 2021are encouraged to notify Representative Counsel of their intention to do so, in writing, by October 4, 2021.

Therefore, I hereby give notice that I object to the order sought by Representative Counsel at the Allocation Hearing for the reasons indicated below:

“Representative Counsel’s fees, disbursements and taxes in respect of its appointment are approved in the aggregate amount of $6,000,000 (collectively, the “Professional Costs”),”

Please review the attached report for additional information.

I DO intend to appear and address the court at the Allocation Hearing on October 18, 2021.

I understand that regardless of whether I attend at the hearing my objection will be filed with the court prior to the hearing of the Allocation Motion.

Date: October 4th, 2021

Name: Wayne Gould

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This objection is being filed by Wayne Gould. I am a member of the Representative Committee (*Terms/definitions detailed in Appendix “A”*). Although there are members of the committee that support the objection, there are some that don’t while others have no opinion or really aren’t engaged on the matter.

What is important is that the Representative Counsel formulated this Committee to reflect a cross section of the investor claimants.

The Committee has been comprised of 12 members with varying levels of ongoing interaction and participation. Those members supporting this objection have been totally engaged and informed throughout the entire process and are committed to voicing the concerns of those 700 investor claimants. The objection stands on its own merit.

Please note: The information detailed within this objection report is offered with the best intentions while maintaining the NDA that committee members were required to sign before being taking on the responsibilities of acting on behalf of the investor claimants.

Objection:

The total amount of fees/expenses/HST ($6 million) as submitted by Representative Counsel.

Solution requested:

That Representative Counsel’s fees and expenses including HST be limited to a maximum of $5,000,000.

Reasons for Objection:

During the mediation process, the Representative Committee was provided with the dollar value from Representative Counsel as the amount of fees/expenses/HST to be included in the settlement calculations.

For the Representative Committee, this figure would serve as the key component of the mediation position that determined the settlement expectations for investor claimants.

Although the $40 mil settlement achieved through mediation appears admirable, there were several factors that resulted in the substantial erosion in the gross claim settlement value. Although these decisions dramatically altered the Representative Committee’s mediation position, decisions were made unilaterally with no consultation.

While the investor claimant amount was depleted by 4.3%, the Representative Counsel fees/expenses/HST increased by 20% (based on the current request).

The current amount for fees/expenses/HST is $6mil. Any increase above the expected $5 mil figure unfairly reduces the recoveries for investor claimants.

Objection – Fees/Expenses/HST

Supporting Details:

Relevant to the fees/expenses/HST, there are several items that have the Representative Committee at odds with Representative Counsel.

Several times over the months leading up to the mediation, the Representative Committee asked for an overview of the legal accounts to date. The requests were fruitless.

The following direction relevant to fees and expenses is detailed in the orders issued by the Honourable Justice Hainey on Thursday, August 06, 2020:

"THIS COURT ORDERS that the fees and expenses of Representative Counsel shall be paid out of the funds recovered for the Investor Claimants (if any) pursuant to or by virtue of this appointment, in accordance with terms to be agreed with the members of the Representative Committee and approved by this Court in the ordinary course, or, in the absence of an agreement, as directed by further order of this Court, having regard to the resources invested, risk assumed and results achieved by Representative Counsel, together with such other considerations as this Court determines to be relevant."

Although there have been discussions that mention terms like "contingency" or "multiples of docketed fees", there had been no discussion that would resemble an agreement with the Representative Committee until the fees position was provided by Representative Counsel during the mediation process.

As detailed in the objection, the Representative Committee felt the number for fees/expenses/HST had been provided by Representative Counsel and would ultimately form part of the final distribution plan. The Representative Committee was able to apply the fixed number to their settlement position and subsequent calculations.

In the days immediately following the settlement, Committee members were discussing the implications of the fees relevant to the settlement and developing different allocation models. All the time using the figure that was provided by Representative Counsel.

It wasn't until 6 or 7 weeks later the Committee learned from Representative Counsel that fees/expenses/HST may increase by 30% or more, creating yet another loss to their returns, estimated at a reduction of 4.3% following mediation.

The July 7, 2021 report to Investor Claimants from PRRR, indicates "the Settlement is highly recommended by Representative Counsel and a Committee of Investor Claimants."

Similarly, the July 7, 2021 report to the Ontario Superior Court, Representative Counsel indicates that the Representative Committee supports the settlement.

Both of the reports were filed well in advance of the Representative Committee's knowledge of the dramatic fees/expenses increase which may have altered this support.

In closing:

While we appreciate PRRRs knowledge and efforts on behalf of the investor claimants and the Court may not take kindly to an objection that questions what the legal fees and expenses should be, please be reminded just how short this legal process has been from start to finish.

From the August 6, 2020 appointment of PRRR, through to the June 24, 2021 mediation settlement and the avoidance of a court litigation date, the condensed timeframe must surely be reflected in the final costs. In less than twelve months a settlement is achieved through mediation obviously mitigating the risk of this case and impacting the final costs.

According to the Consumer Law Group (CLG) class action law suits in Canada can take 2 – 3 years on average to complete.

In addition, there were no costs incurred for the mediator nor the supplemental support provided by the liquidators.

Having never been provided with any overview of the fees or expenses, it's almost impossible to really know what constitutes the current request put forward by Representative Counsel. This unknown generated constant questions:

- ✓ Was the file being overstaffed and resulting in the duplication of effort?
    - Was there a need for the number of lawyers? One may wonder what they all contributed and was there value;
    - Was there a need for multiple accountants?
    - Were lawyers and interns performing clerical duties?
    - Was there a need for a survey that no one seen?
    - Was there really a need for a parallel strategy?
- ✓ Was there a consideration for the savings generated by all the virtual meetings and working from home (reduced overhead) as a result of Covid-19 restrictions?

Based on the foregoing and the information that was provided by Representative Counsel, we respectfully request that the fees and expenses, including HST, be limited to a maximum of $5,000,000.

Submitted by Wayne Gould.

APPENDIX “A”

<u>Term/definitions:</u>

Claimant *– same as Investor Claimant*

Investor Claimants *– means all individuals who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants and any related persons or organizations (collectively "Defendants") in respect of: (i) the purchase PACE Financial Limited's Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares; and, (ii) the purchase of equivalent investments in FHH as well as FHH warrants (collectively, with (i) the "Preference Shares").*

Representative Committee *- a committee comprised of Investors*

Committee *– same as the Representative Committee*

Investor Steering Committee *- a committee combined of Representative Committee and Representative Counsel Members*

Representative Counsel *- Paliare Roland is appointed to represent the Investor Claimants*

PRRR *– is Representative Counsel*