



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703161-00CL

DATE: April 8, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: ROMSPEN INVESTMENT CORPORATION v. TUNG KEE
INVESTMENT CANADA LTD. et al
BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
POLIAK, MAYA	TUNG KEE INVESTMENT CANADA LTD.	Maya@chaitons.com
	TUNG KEE INVESTMENT LIMITED PARTNERSHIP	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
GOLDEN, ERIC	ERNST & YOUNG (Receiver)	egolden@blaney.com
MACDONALD, ROBERT	2149602 ONTARIO INC.	rmacdonald@foglers.com
	PA, FRANK	
	TUNG, STEHPHEN	
MCNAMARA, BOTA	SOW CAPITAL ONTARIO LIMITED (Creditor)	bmcnamara@weirfoulds.com

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] By the court's February 7, 2024 endorsement, a full day motion was scheduled and pre-hearing steps were timetabled, leading up to an April 18, 2024 hearing date.
- [2] The parties on this motion represented by Mr. MacDonald (214, Tung, Pa) did not deliver their reply/responding motion record by the deadline of February 27, 2024, and only did so on April 3, 2024 on the eve of the scheduled cross-examinations that had been set for April 4 and 5, 2024. They seek leave of the court for the late delivery of this reply/responding motion record.
- [3] The parties represented by Ms. Poliak (the respondents to this application and to this motion) ask that the court either deny the requested leave for late delivery, or that the court adjourn the motion to allow time for their response, with an order for costs thrown away (for the cross-examinations that had to be cancelled at the last minute due to the late delivery of the responding motion record, claimed at \$5,000 on a substantial indemnity basis) and an order that the interest be paused on the responding parties' loan for the period of delay if the motion is adjourned (from April 18 to the new hearing date). The rationale for this, to my understanding, is that the motion is only being delayed because of the late delivery of the reply/responding materials of these parties and their interest rate is 30%, which they would be getting for the additional time that the motion is pending even if they win, because the decision could have been made earlier.
- [4] After hearing the submissions of the parties, the following directions are made (the timetable for the delivery of materials having been vetted by the affected parties):
- a. The April 18, 2024 hearing is adjourned to May 23, 2024;
 - b. The reply motion record shall be delivered by April 19, 2024;
 - c. Any rule 39.03 and cross examinations shall be completed by May 3, 2024 (tentative dates discussed were April 29 and 30, 2024);
 - d. If any party believes as a result of the evidence in the record following the completion of examinations that there may be a need for the court to hear *viva voce* evidence on this motion, they shall request a case conference for directions regarding such evidence in advance of the hearing;
 - e. The 214, Tung, Pa factum shall be delivered by May 6, 2024;
 - f. The respondents' factum shall be delivered by May 10, 2024;
 - g. The reply factum of 214, Tung and Pa, if any, shall be delivered by May 21, 2024 at 2 p.m.;

- h. If Mr. McNamara is delivering any materials on behalf of his client after today, he shall abide by the delivery deadlines applicable to the respondents; and
- i. All materials for this motion (to be heard on May 23, 2024) shall be uploaded onto CaseLines by no later than 5:00 p.m. on May 21, 2024.

[5] In terms of the other requested terms of the leave that has been granted, 214, Tung and Pa shall pay forthwith to the respondents the disbursement cost of the cancellation of their translator booked for the cross examinations in the amount of \$259.90 (inclusive of applicable taxes). The respondents may re-visit their request for substantial indemnity costs thrown away of the cancelled cross-examinations when they make their cost submissions on the motion, but those are not being ordered now. Similarly, the respondents may renew their request for an interest hiatus for the period of April 18 to May 23, 2024 at the hearing of the motion, but that relief is not being ordered today.

[6] This endorsement and the directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in black ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.