CITATION: Davidson v. Stableview Asset Management Inc. et al., 2021 ONSC 895
COURT FILE NO.: CV-20-648572-00CP
DATE: 20220208

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Shannon Davidson

AND:

Grant Thornton Limited, in its capacity as Receiver and Manager of Stableview Asset Management Inc., Stableview Yield and Growth Fund, Stableview Progressive Growth Fund, Stableview Insight Fund LP, Stable Insight Fund GP Inc. and Colin Fisher

BEFORE: J.T. Akbarali J.

COUNSEL: *Margaret L. Waddell and Sean Brown*, for the plaintiff

Brendan F. Morrison, for the defendant Colin Fisher

Harvey Chaiton and Maya Poliak, for the defendant receiver

HEARD: In writing

Proceeding under the *Class Proceedings Act, 1992*

ENDORSEMENT

[1] The plaintiff in this proposed class action brings a motion, on consent of the defendant Colin Fisher, and unopposed by the receiver, to dismiss this action without costs.

[2] In her statement of claim, the plaintiff claimed damages for investment losses on behalf of the putative class. At the time the statement of claim was issued, the estimated loss to the plaintiff and the putative class members was at least $7.9 million. The plaintiff alleged these losses were caused due to mismanagement of her, and the class members', investments by the defendants. She pleaded causes of action in negligence, breach of contract, breach of fiduciary duty, conflict of interest, and breaches of the *Securities Act*, R.S.O. 1990, c. S.5

[3] The putative class is defined as those individuals who, from January 1, 2016 to March 24, 2020, were invested in any of (i) the Stableview Progressive Growth Fund; (ii) the Stableview Yield & Growth Fund, or (iii) the Stableview Insight Fund LP.

[4] The crux of the claim is that the defendants caused the class members' money to become highly concentrated in debentures issued by Clarocity, a penny stock technology company. On June 5, 2019, Stableview moved to put Clarocity into receivership. The receivership ended with a buy-out transaction under which iLookabout, another penny stock technology company, acquired all Clarocity's assets. The purchase price for the assets was paid in common shares, warrants, and

convertible debentures of iLookabout. Under the terms of the transaction, the shares were subject to a standstill agreement, and Stableview's ability to sell the iLookabout shares was very restricted.

[5] Subsequent to the commencement of the action, the iLookabout shares have increased in value, such that it is likely that the losses of the plaintiff and putative class members have been made good.

[6] Moreover, the proposed representative plaintiff deposes that she has determined that Stableview does not have a policy of insurance that would respond to the claims set out in the statement of claim. Nor does the individual defendant have assets that could be used to satisfy the claim.

[7] For these reasons, the plaintiff seeks approval of the court to dismiss the claim on a without costs basis.

[8] Approval of the court to dismiss the claim is required under s. 29(1) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6. The policy rationales for requiring court approval to dismiss a class proceeding include (i) deterring plaintiffs and class counsel from abusing the class action procedure by bringing a meritless class proceeding to extract a payment as the price of discontinuing the class proceeding, and (ii) providing an opportunity to ameliorate any adverse effect of the discontinuance on class members who might be prejudiced by the discontinuance: *Gradja v. Barrick Gold Corporation*, 2019 ONSC 4869, at para. 15; *Naylor v. Coloplast Canada Corporation*, 2016 ONSC 1294, at para. 24.

[9] The central issue for determination is whether the putative class members may be adversely affected by the discontinuance of the class proceeding. To grant a dismissal, I must be satisfied that the interests of the class will not be prejudiced: *Hudson v. Dr. Richard Austin*, 2010 ONSC 2789, at para. 35; *Naylor*, at para. 24.

[10] The court may also consider whether (i) the proceeding was commenced for an improper purpose, (ii) if necessary, there is a viable replacement party so that putative class members are not prejudiced, or (iii) the defendant will be prejudiced: *Raponi v. Olympia Trust Company*, 2021 ONSC 6761, at para. 7.

[11] In this case, the class action was commenced for a proper purpose. At the time the claim was issued, it appeared that the putative class had suffered substantial losses. However, due to the increase in value of the iLookabout shares, the dismissal of the action will not prejudice the interests of the putative class members because it now appears that they have suffered no losses. There is thus no prejudice that a new proposed representative plaintiff could address. The defendants have consented to, or do not oppose, the motion. There is no utility in continuing the action.

[12] The plaintiff also seeks an order providing that no notice of dismissal need be published to the putative class members. Rather, she proposes that class counsel will post a notice of the dismissal on their websites for a period of 90 days from the order of the court and will advise any putative class members who have contacted them that the action has been dismissed.

[13] Under s. 19(4) of the *Act*, I am directed to make such orders respecting notice under subsections 19(2) and (3) as are "necessary to ensure that the notice given is the best notice that is practicable in the circumstances."

[14] Under s. 29(4), in dismissing a proceeding for delay, or in approving a discontinuance, abandonment or settlement, the court shall consider whether notice should be given under s. 19, and whether it should include an account of the conduct of the proceeding, a statement of the result of the proceeding, and a description of any plan for distributing settlement funds. Section 19 thus contemplates that it may be appropriate to order no notice of a dismissal be given.

[15] In my view, the notice proposed by the plaintiff is appropriate in the circumstances, having regard to the early stage of these proceedings, and the fact that putative class members are likely aware that their losses have been made good due to the rise in the value of iLookabout shares.

[16] Order to go in accordance with the draft I have signed.

J.T. Akbarali J.

Date: February 8, 2022