

FEB 25 2019

HALIFAX, N.S.

SUPREME COURT OF NOVA SCOTIA

2018

Hfx No. 480448

Between:

ALEX LYON & SON SALES MANAGERS AND AUCTIONEERS, INC.

PLAINTIFF

and

PHILIP CHANCEY, DARTMOUTH SURPLUS LIMITED, 63391  
NEWFOUNDLAND AND LABRADOR INC., HQ TECH CORPORATION  
and MARKO SANDALJ

DEFENDANTS

ORDER

CONSENT ORDER  
(Re: Release of Injunction)

BEFORE THE HONOURABLE JUSTICE C. RICHARD COUGHLAN IN CHAMBERS:



WHEREAS the Parties in the above noted action have reached a resolution of all matters addressed in the Order Re: Preservation of Assets issued by the Honourable Justice Peter Rosinski dated September 21, 2018 ("the "Mareva Order"), a copy of which is attached to this Order as Appendix A;

NOW UPON MOTION of the Plaintiff, it is hereby ordered that:

1. The Mareva Order, is hereby discharged without costs, disbursements or damages payable by any party.
2. For greater certainty, the injunction freezing and preserving the Defendants' assets and described in paragraphs 2 – 8 of the Mareva Order is hereby lifted.
3. For greater certainty, any financial institution to whom notice of the Mareva Order was given is hereby released from any obligation to preserve assets beneficially owned by the Defendants and released from all of the terms in paragraph 9 of Justice Rosinski's Order.

DATED at Halifax, Nova Scotia, this 25<sup>th</sup> day of February, 2019.

\_\_\_\_\_  
PROTHONOTARY

TIMOTHY D. MORSE

CONSENTED TO:

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MARK J. CHARLES  
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**Solicitors for Philip Chancey and 63391  
Newfoundland and Labrador Inc.**

**“Appendix A”**

2018

Court Administration
SEP 21 2018
Halifax, NS

Hfx. No. 480448

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**ALEX LYON & SON SALES MANAGERS AND AUCTIONEERS, INC.**

**PLAINTIFF**

-and-

**PHILIP CHANCEY, DARTMOUTH SURPLUS LIMITED, 63391  
NEWFOUNDLAND AND LABRADOR INC., HQ TECH CORPORATION  
and MARKO SANDALJ**

**DEFENDANTS**



**ORDER  
(Re: Preservation of Assets)**

**BEFORE THE HONOURABLE JUSTICE PETER ROSINSKI IN CHAMBERS:**

**WHEREAS** the Plaintiff made an *ex parte* Motion pursuant to Rules 41 and 42 of the Nova Scotia *Civil Procedure Rules* and the common law test for *Mareva* Injunctions and for an interim or interlocutory injunction to protect and preserve the assets of the Plaintiff;

**AND WHEREAS** the Plaintiff relied on the Affidavit of Jack Lyon sworn September 17, 2018, the Supplemental Affidavit of Jack Lyon sworn September 20, 2018, and written and / or oral submissions in this proceeding;

**AND WHEREAS** the Motion was heard on an emergency *ex parte* basis at the request of the Plaintiff on September 21, 2018 at 9:30 a.m. in Halifax, Nova Scotia.

**NOW UPON MOTION OF THE PLAINTIFF, IT IS HEREBY ORDERED THAT:**

**Service on Defendants**

1. As soon as practicable, the Plaintiff shall serve upon all Defendants the Notice of Action and Statement of Claim issued herein and copies of the Affidavit and all other material filed by the Plaintiff in support of this motion.

**Preservation of Assets and Freezing Injunction: Defendants**

2. Until trial or further Order of the Court, the Defendants, their servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:
  - (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any assets of the Defendants, wherever situate, whether in Nova Scotia or elsewhere;
  - (b) instructing, requesting, counselling, demanding or encouraging any other person to do so;
  - (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.
3. This Order applies to all assets beneficially owned by Defendants and any asset in which they have or may have an interest, whether they are held directly or indirectly by Defendants or through any company, trust, partnership, or other entity beneficially owned or controlled by Defendants or through any other affiliated person or company.
4. This Order applies to any such asset of the Defendants in respect of which they have the power, directly or indirectly, to dispose of or deal with the asset. The Defendants shall be regarded as having such power if a third party (including any individual or corporate entity) holds or controls the asset in accordance with direct or indirect instructions of Defendants.
5. In particular, but without any limitation, this Order shall apply, to the following assets of Defendants:
  - (a) any money in, or standing to the credit of, any bank account of any of the Defendants in Nova Scotia, including an account at Royal Bank of Canada in Nova Scotia, Canada;
  - (b) any money in, or standing to the credit of, any bank account of any of the Defendants outside Nova Scotia and, for clarity, outside Canada;

- (c) any money in, or standing to the credit of, any other bank account to which Defendants have transferred funds, whether in or outside Nova Scotia and, for clarity, outside Canada.
6. If the total value free of charges or other securities ("unencumbered value") of the Defendants' assets in Nova Scotia exceeds USD \$600,000, the Defendants may remove any of those assets from Nova Scotia or may dispose of or deal with them so long as the total unencumbered value of the Defendants' assets still in Nova Scotia remains above USD \$600,000.
7. If the total unencumbered value of the Defendants' assets in Nova Scotia does not exceed USD \$600,000, the Defendants must not remove any of those assets from Nova Scotia and must not dispose of or deal with any of them. If the Defendants have other assets outside Nova Scotia, they may dispose of or deal with those assets outside Nova Scotia so long as the total unencumbered value of all their assets, whether in or outside Nova Scotia, remains above USD \$600,000.
8. The Defendants, and each of them, are hereby ordered to prepare and provide to the Plaintiff on or before October 4, 2018, a sworn affidavit giving a full accounting of the USD \$600,000 deposited to the accounts of HQ Tech Corporation on March 13, 2018, including full particulars of all deposit facilities (including bank account numbers and bank addresses) and/or assets purchased or maintained using the USD \$600,000 and describing the nature, value and location of their accounts worldwide, whether in the particular Defendant's own name or whether jointly owned.

**Cooperation to Preserve Assets: Third Parties**

9. To give effect to the terms of this Order, Royal Bank of Canada and any other financial institution wherever located and to whom notice of this Order may be provided, shall:
- (a) preserve all assets beneficially owned by any of the Defendants and any asset in which any of the Defendants have or may have an interest which are held by such banks and refrain from in any way diminishing or disposing of the value of such assets including, without any limitation, by not transferring any of Defendants' assets to the Defendants, any other creditor of Defendants, or any other person until further Order of this Court; and

- (b) provide in writing to the Plaintiff and the Court within 5 business days of the date of service of this Order full details of the nature and value of all of Defendants' assets, if any, held by such banks or by any affiliated company or person; and
- (c) forthwith disclose and deliver up to the Plaintiff any and all records held by the financial institution concerning the Defendants or their assets, accounts, including the existence, nature, value and location of any monies or assets or credit wherever situate, held on behalf of the financial institution.

#### **Effect of Order**

10. The terms of this Order will affect third parties in a country, province or state outside the jurisdiction of this Court in the following circumstances:
- (a) the Defendants or their officers/agents as the case may be;
  - (b) any person who:
    - (i) is subject to the jurisdiction of this Court;
    - (ii) has been given written notice of this Order at his/her/its residence or place of business within the jurisdiction of this Court; and
    - (iii) is able to prevent acts or omissions outside the jurisdiction of this Court which assist in or constitute a breach of the terms of this Order; and
  - (c) any other person to the extent that this Order is declared enforceable by or is actually enforced by a Court in that country, province or state.
11. Nothing in this Order shall, in respect of assets located outside Nova Scotia, prevent any third party from complying with:
- (a) what it reasonably believes to be its obligations under the laws of the country, province or state in which those assets are situated; and
  - (b) any Order of a Court of that country, province or state, provided that reasonable notice of any application for such Order is given to Plaintiff.

#### **Costs, Variation or Discharge**

- 12. The costs of this motion shall be reserved and subject to further Order of this Court.
- 13. Anyone served with or notified of this Order may make a motion to the Court at any time to vary or discharge this Order, but any such person must first inform the Plaintiff and serve upon the Plaintiff any evidence or materials to be relied upon in support of the motion.

DATED at Halifax, Nova Scotia, this 21 day of September, 2016.

*Jessica Southier*

JESSICA SOUTHER  
Deputy Registrar

IN THE SUPREME COURT  
 COUNTY OF HALIFAX, N.S.  
 I hereby certify that the foregoing is a true  
 and correct copy of the original as filed in my  
 office in the Registry of the Court of the Halifax

SEP 21 2016

*Jessica Southier*  
 Deputy Registrar

JESSICA SOUTHER  
Deputy Registrar