

09-8302-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

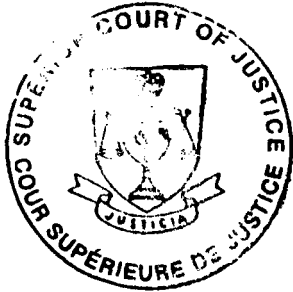
JAMES HAGGERTY HARRIS

Applicant

- and -

BELMONT DYNAMIC GROWTH FUND,
an Ontario Limited partnership

Respondent



APPLICATION UNDER Rule 14.05(2) of the *Ontario Rules of Civil Procedure*,
Section 35 of the *Partnerships Act* and section 101 of the *Courts of Justice Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on August 27, 2009, at 10:00 a.m. or as soon after that time as the application can be heard, at 330 University Avenue, Toronto, Ontario.

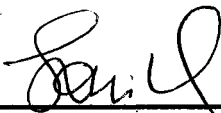
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court

office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July ³¹~~30~~, 2009

Issued by 
Local registrar

Address of court office 330 University Avenue
Toronto, Ontario

TO: BELMONT DYNAMIC GROWTH FUND
Suite 800
357 Bay Street
Toronto, ON M5H 2T7

AND TO: BELMONT DYNAMIC GP INC.
Suite 800
357 Bay Street
Toronto, ON M5H 2T7

AND TO: OMNISCOPE ADVISORS INC.
Suite 800
357 Bay Street
Toronto, ON M5H 2T7

AND TO: HARCOURT INVESTMENT CONSULTING AG
Suite 800
357 Bay Street
Toronto, ON M5H 2T7

**AND TO: NATIONAL BANK OF CANADA and NATIONAL BANK OF CANADA
(GLOBAL MEDIA INDIES) c/o NATIONAL BANK OF CANADA**
1155 rue Metcalfe, 19th Floor
Montreal, Quebec, H3B 5G2

APPLICATION

1. The Applicant makes an application for:
 - (a) An order for the dissolution of Belmont Dynamic Growth Fund (the “Belmont Fund”), an Ontario Limited partnership;
 - (b) An order appointing KPMG Inc. (“KPMG”) as receiver and manager (“Receiver”) of all the assets, undertakings and properties of the Belmont Fund with the authorities and powers described in the Affidavit of Robert Craig McDonald (the “McDonald Affidavit”);
 - (c) An order for approval of the proposed manner of providing substituted service on each Limited Partners (defined below) of the Belmont Fund as described in the McDonald Affidavit;
 - (d) An order validating service of the Notice of Application upon the Belmont Fund and the General Partner (defined below) and declaring that unless the Belmont Fund or General Partner, as the case may be, serves a Notice of Appearance in this proceeding, the Applicant is not required to provide further notice of these proceedings to it; and,
 - (e) Such further and other relief as counsel may advise and this Honourable Court considers just.

2. The grounds for the application are:
 - (a) The Belmont Fund is an investment fund that was established as a limited partnership pursuant to a Limited Partnership Agreement (the “LP Agreement”) between Belmont Dynamic GP Inc. (the “General Partner”), as general partner, and 135 limited partners (the “Limited Partners”).
 - (b) RBC Phillips, Hager & North Investment Counsel Inc. (“RBC PH&N IC”) acts as the portfolio manager for 126 of the 135 Limited Partners and its affiliate, RBC Dominion Securities Inc., acts as portfolio manager for 4 of Limited

Partners and maintains brokerage accounts for the remaining 5 Limited Partners.

- (c) The General Partner, an Ontario corporation, acts as manager of the Belmont Fund.
- (d) In an effort to achieve its objective of generating absolute returns that are not correlated to global equity or bond markets, the Belmont Fund entered into certain forward contracts, which allowed it to obtain exposure to the returns of the Belmont Dynamic Growth Segregated Portfolio (the “Underlying Fund”) without having a direct interest in the Underlying Fund.
- (e) Harcourt Investment Consulting AG (“Harcourt”), one of two shareholders of the General Partner, is a portfolio management firm that advises the Underlying Fund.
- (f) The value of partnership units in the Belmont Fund has declined since August, 2006.
- (g) In October, 2008, Harcourt advised RBC PH&N IC that the Underlying Fund was no longer viable due primarily to the relatively recent turmoil in the financial markets. Harcourt advised that steps would therefore be taken to dissolve the Belmont Fund.
- (h) The Limited Partners have incurred losses as a result of the declining value of the partnership units. The prospect of any recovery of such losses appears to be remote.
- (i) Despite such losses, the Belmont Fund continues to incur fees and expenses including:
 - (i) An administration fee payable to the General Partner for the services it provides to the Belmont Fund.

- (ii) A monthly management fee and performance fee payable to Harcourt for the investment management services it provides to the Underlying Fund.
 - (iii) A fee payable to the counterparty on the forward contracts, payable by the Belmont Fund monthly in arrears.
 - (iv) Other expenses incurred in the ordinary course of the administration and operation of the Fund, including, without limitation, custodian, audit and legal fees, related administration fees and the cost of providing information to Limited Partners.
- (j) As long as the Belmont Fund continues to incur such fees and expenses, the remaining equity of the Limited Partners in the Belmont Fund is being eroded.
- (k) Moreover, redemptions in the Underlying Fund have been suspended due to redemption suspensions by the hedge funds underlying the Underlying Fund. Accordingly, the Limited Partners have been and continue to be prevented from redeeming partnership units in the Belmont Fund.
- (l) The combined effect is that, unable to redeem the partnership units, the Limited Partners are unable to redeploy funds invested in the Belmont Fund in an attempt to recover losses incurred. Instead, their funds are trapped and subject to continuing erosion as a result of the fees and expenses that continue to be charged and paid to the benefit of the General Partner and Harcourt, among others.

PREVIOUS ATTEMPT TO DISSOLVE PARTNERSHIP AND APPOINT RECEIVER

- (m) In December, 2008, the General Partner provided RBC PH&N IC with a draft notice of a special meeting of Limited Partners that was to be convened to consider and approve the dissolution of the Belmont Fund and the appointment of a receiver.

- (n) However, the meeting was never convened because of an “impasse” that is alleged to have developed between Harcourt and the other shareholder of the General Partner, which has become the subject of a court proceeding.

DISSOLUTION: JUST AND EQUITABLE

- (o) A limited partner may make an application to the court for the dissolution of the limited partnership pursuant to section 35 of the *Partnerships Act* since:
 - (i) Pursuant to section 10 of the *Limited Partnerships Act*, a limited partner has the same rights as a general partner “to obtain dissolution of the limited partnership by court order”.
 - (ii) Pursuant to section 8 of the *Limited Partnerships Act*, the rights and powers of a general partner are the same as those of partner in a partnership without limited partners (a “Partner”), except for certain limitations that are unrelated to dissolution.
 - (iii) A Partner may make an application for the dissolution of the partnership pursuant to section 35 of the *Partnerships Act*.
- (p) Section 35 of the *Partnerships Act* provides that on application of a partner, the court may order the dissolution of the partnership when, among other things, “circumstances have arisen that in the opinion of the court render it just and equitable that the partnership be dissolved”.
- (q) The circumstances set out above make it just and equitable to dissolve the limited partnership.
- (r) Further, pursuant to investment management agreements with Limited Partners and the terms of the LP Agreement, RBC PH&N IC is authorized on behalf of a sufficient number of Limited Partners to approve dissolution of the Belmont Fund and the appointment of a receiver.

- (s) However, a court-supervised receivership and dissolution process is more appropriate than proceeding privately, and is just, convenient and equitable, for the following reasons:
- (i) the Receiver, as a court-appointed officer, will be an independent party and therefore in a better position, compared to the General Partner or a privately-appointed receiver, to resolve or otherwise deal with issues that may arise between the partners and other stakeholders, between the General Partner and the Limited Partners, and between the Limited Partners themselves;
 - (ii) the complexity of the structure of the Belmont Fund and its investments, the key agreements and relationships, the realization process and potential tax implications makes it appropriate to have a court-supervised process;
 - (iii) the Receiver will have experience and expertise relevant to the proposed dissolution of the Belmont Fund that the Partners do not have;
 - (iv) the transparency afforded by a court-supervised process is desirable and important because the current situation, and an appropriate process to address it, would not have been within the contemplation of the parties at the outset when the LP Agreement was prepared;
 - (v) court receivership and dissolution proceedings would prevent a multiplicity of proceedings in respect of the dissolution of the Belmont Fund, realization on its assets, and the appropriate distribution of the proceeds;
 - (vi) if it is determined that a court-supervised claims process would facilitate the distribution of the realization proceeds of the Belmont Fund's property, it could be implemented in a court receivership and dissolution proceeding;

- (vii) RBC PH&N IC would be very reluctant to fund a private dissolution because a private dissolution would lack the transparency and efficiency of a court-supervised process.; and,
- (viii) given the impasse that currently exists between the shareholders of the General Partner, the impact of the impasse on the General Partner and the documentation in relation to the Belmont Fund that is in the possession or control of these entities, a receiver will require the cooperation of these entities and it may be difficult to obtain such cooperation in the absence of the relief sought.

NOTICE TO GENERAL PARTNER AND LIMITED PARTNERS

- (t) Given the number and nature of the parties interested in these proceedings, personal service on the Limited Partners is impractical, undesirable, and unnecessary to provide notice of relevant matters in these proceedings.
- (u) The method described in the McDonald Affidavit is a fair and reasonable approach to giving the Limited Partners notice of these proceedings.
- (v) With respect to the Belmont Fund and the General Partner, they will be served with the Notice of Application by personal service on the General Partner in both its own capacity and on behalf of the Belmont Fund. However, it is unclear whether the Belmont Fund and/or the General Partner will respond to these proceedings given the impasse that has developed between the General Partner's two controlling shareholders.
- (w) It is appropriate, in order to provide greater clarity, to grant an order validating service upon the Belmont Fund and the General Partner and declaring that unless the Belmont Fund or General Partner, as the case may be, serves a Notice of Appearance in this proceeding, the Applicant is not required to provide further notice of these proceedings to it.

OTHER

- (a) The Applicant also relies upon:
 - (i) Sections 8 and 10 of the *Limited Partnerships Act*, R.S.O. 1990, c. L.16;
 - (ii) section 35 of the *Partnerships Act*, R.S.O. 1990, c. P.5;
 - (iii) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
 - (iv) rules 2.03, 14, 16, 38 and 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
 - (v) the equitable jurisdiction of this Honourable Court; and
 - (vi) such further and other grounds as counsel may advise and this Honourable Court may permit.

- 3. The following documentary evidence will be used at the hearing of the application:
 - (a) The affidavit of Robert Craig McDonald, sworn July 30, 2009; and,
 - (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

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July 30, 2009

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Respondent

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Proceeding commenced at Toronto

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