SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-060303-217

DATE: January 7, 2022

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

AUTORITÉ DES MARCHÉS FINANCIERS
Plaintiff
v.
FINANCE SILVERMONT INC.
CAPITAL SILVERMONT INC.
LES INVESTISSEMENTS GREEN RIVER INC.
GREEN RIVER FINANCE CANADA INC.
9129-6004 QUÉBEC INC. (F.A.S. FINANCEMENT GREEN RIVER INC.)
FIDUCIE DE REVENU MARDI.INFO;
FIDUCIE D'OPÉRATION (D'EXPLOITATION) MARDI.INFO;
MARDI.INFO MARCHÉ DISPENSÉ S.E.C.;
MARDI INFO COMMANDITÉ INC.;
9428-5855 QUÉBEC INC.
Defendants
and
RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.
Receiver

JUDGMENT
ON THE SILVERMONT CONTESTATION

JI0082

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Overview

[1] Finance Silvermont inc. and Capital Silvermont inc. (collectively "Silvermont" unless the context dictates otherwise) have been placed under receivership pursuant to a request by the Autorité des marches financiers on October 15, 2021 (the "Immer Judgment").

[2] As is permitted in such matters by the *Act respecting the regulation of the financial sector*[1] (the "Act"), the hearing was held *ex parte* and à *huis clos*. As also allowed by the *Act*, Silvermont filed a contestation after the Immer Judgment was rendered.

[3] This contestation was eventually heard alongside the contestation of two further groups of Defendants, namely the MarDi Group and the Green River Group. This Court dismissed the MarDi Group's contestation (the "MarDi Judgment") and the Green River Group's contestation (the "Green River Judgment") in judgments rendered concurrently with this judgment.

[4] The present judgment deals with the Silvermont means of contestation. Silvermont does not mince its words in laying out its arguments in its detailed contestation.[2] It is of the opinion that:

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1 CLRQ, c. E-6.1.
2 Silvermont Detailed Contestation dated November 22, 2021, par. 5, 7 and 8.

4.1. Every so-called "worrisome" fact as portrayed by the AMF in the Ex Parte Proceeding is either misleading, inaccurate, or blatantly false;

4.2. The "reasonable grounds" described in the Ex Parte Application are based on conjecture, misleading representations, unproven assumptions and cleverly crafted innuendo, which do not bear up to thorough analysis;

4.3. Fraught with errors, omissions and irregularities, the Ex Parte Application is nothing more than an overzealous accusation which has caused irreparable damage to Silvermont and its reputation.

[5] More precisely, by making detailed representations with respect to seven specific factual themes, Silvermont Group alleges that the AMF failed to act with the transparency required when it proceeded on an *ex parte* basis. The AMF mischaracterized or failed to disclose important facts. The Immer Judgment would not have been rendered had the true state of facts been presented in a fair, objective and transparent manner.

[6] During the hearing, and up to the moment the Receiver began its presentation, Silvermont argued, as a subsidiary argument, that the Receiver was in a conflict of interest and that if the receivership was not cancelled, the Receiver could not act in this file, because of, amongst other reasons, his role in the parallel Cape Cove file where he was also named Receiver.

[7] In response, the Receiver filed an affidavit to which he attached his first report of the Receiver in the Cape Cove matter, so as to show how the files were interrelated.[3] The Receiver also filed a joint report, which serves as a second report in the Cape Cove matter and a first report in the present matter. This gave rise to a heated debate at the outset of the hearing. The Defendants vehemently objected to the production of the Receiver's reports and asked that they be stricken from the record.

[8] The Court decided on the first morning of the hearing that it was not only appropriate, but indeed expected, that the Court-appointed Receiver report on his activities. The reports would not be stricken from the Court record. These reports could however not be used to bolster the evidence that was provided by the AMF when the Immer Judgment was rendered. If, nevertheless, reference to the reports was necessary to rebut Silvermont's argument regarding the alleged conflict of interest, the Receiver would be free to indicate, in its pleadings, what part of these reports it would rely on to respond to the arguments made by the Defendants. At that point, the Defendants could formulate further specific objections and possibly adduce further evidence to contradict the reports.

[9] This having been decided, Silvermont then argued its case, pleading, amongst other arguments that the Receiver was indeed in a conflict of interest. As the Receiver was about to begin its representations, Silvermont's counsel most likely realized in how

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3 Affidavit of Emmanuel Phaneuf of December 9, 2021, as well as the report RCAP-1.

far the reports were germane to the debate of the conflict of interest. Given that Silvermont felt that the content of the reports could be highly detrimental to its contestation, it withdrew, at the eleventh hour, its arguments relating to the Receiver's alleged conflict. The Receiver therefore had nothing left to say and made no representations. The reports are not be relied on by the Court to decide the issues.

[10] The Court must now decide whether the seven factual themes warrant cancelling the receivership. Prior to analyzing each of these themes, the Court will make certain comments regarding the Applicable Legal Principles, the Corriveau Judgment and the facts alleged in the AMF's *Demande présentée ex parte et à huis clos afin d'ordonner la nomination d'un administrateur provisoire*.

Applicable Legal Principles

[11] To rule on Silvermont's contestation, the Court will apply the principles which it has explained in detail in the *Cadre legal* set out at paragraphs 11 to 22 of the MarDi Judgment and which it incorporates by reference herein.

[12] In summary, to decide the matter, it will use the approach set out at paragraphs 21 and 22 of the MarDi Judgment, which is reproduced below for ease of reference:

> [20] Il écarte la première approche et opte plutôt pour la deuxième approche. Ainsi, l'approche à privilégier est la suivante :
>
> > [56] In my view the second approach should be adopted in Quebec as well. When there is material non-disclosure, the following factors should be considered by the judge hearing a motion to rescind or annul an ex parte order:
> >
> > - the importance of the omitted facts to each of the issues decided by the judge;
> >
> > - whether the omission was inadvertent, its relevance was misconstrued or whether the omission was made with the intent to mislead the judge;
> >
> > - the prejudice occasioned to the party affected by the ex parte order;
> >
> > - whether the order reviewed could be granted again on the basis of a corrected record.
>
> [21] Ainsi, le Tribunal retient que pour chacun des éléments soulevés par le groupe MarDi, il doit s'interroger s'il s'agit d'un « material non disclosure » et si oui, selon l'importance du fait, les raisons pour lesquelles il ne lui a pas été présenté, le préjudice que cela occasionné et si au final, il aurait rendu une décision différente.

[13] In its representations, Silvermont suggested that the mere fact that important facts were not disclosed warranted the Court to cancel the receivership. This in incorrect. Such a sanction would flow from what the Court of Appeal has qualified as the "first approach". This approach was rejected by the Court of Appeal in *Marciano*, and it rather mandated the four pronged "second approach" set out above.

[14] Silvermont also argues in its detailed contestation that there was "absolutely no urgency", there was no "potential risk of Silvermont disposing of its assets" and that the "allegations with respect to urgency are vague, speculative and not supported by any evidence whatsoever". Insofar as Silvermont Group pleads this as a stand-alone ground of contestation,[4] this Court will not entertain this argument, as it constitutes an appeal of the Immer Judgment.[5] The *Act* does not allow appeals,[6] and in any event, if it did not prohibit such an appeal, it would be for the Court of Appeal and not this Court to decide the matter.

The Corriveau Decision in Cape Cove

[15] The Court incorporates by reference the sub-section *1. Contexte du dossier Cape Cove donnant lieu au Jugement Corriveau* of its *Analyse* of the MarDi Judgment including, the facts relating to Gavriil, Cape Cove, Green CBD and Tzaferis which are key considerations in rendering this judgment.

[16] Building on this first factual foundation, the Court will carry out its analysis by first reviewing the facts which were presented to the Court on October 15, 2021 via the AMF's *Demande présentée ex parte et huis clos afin d'ordonner la nomination d'un administrateur provisoire* (hereinafter "Demande") as regards Silvermont and its directing mind Nick Tzaferis and which lead to the Immer Judgment. It will then examine the seven factual themes specifically raised by Silvermont.

Analysis

1. The facts alleged regarding Silvermont and Tzaferis

[17] Silvermont Finance[7] was incorporated under the *Canadian Business Corpoations Act* on January 11, 2018 and registered (immatriculé) on September 19, 2018. Its president is Tzaferis and its first shareholder is 9159908 Canada inc., which is owned by Tzaferis.

[18] Silvermont Finance has raised substantial sums from investors as a result of two offering memoranda produced in the fall of 2018.

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4 Silvermont's Argument Plan and Authorities, par. 8 to 16.
5 The Court of Appeal did allow an appeal on this basis in *Marciano (séquestre de)*, 2012 QCCA 1876.
6 Act, art. 19.14.
7 AMF's Demand, par. 112 to 114; exhibits P-31 to P-33.

18.1. A first *Notice d'offre* was produced on September 21 2018 (the "Initial OM") by Silvermont Finance offering bonds with fixed terms of interest for a maximum offering of $8,000,000.[8]

18.2. An Amended and restated Offering Memorandum was produced by Silvermont Finance on November 30, 2018 (the "Amended OM"). This Amended Notice advised potential investors that "since September 21, 2018, Bonds in the aggregate principal amount of $824,000 have been sold, up to and including November 30, 2018". The maximum offering was now $12,000,000 which Silvermont Finance intended to raise within a year.[9]

[19] The facts which the AMF alleges in order to show that it has grounds to believe that either of the scenarios set out at paragraphs 19.1 of 1⁰) to 4⁰) are met are as follows:

19.1. Link of Tzaferis and Cape Cove: Tzaferis is the vice-president of Cape Cove since February 2018.[10] He is shareholder of Cape Cove via 9368-2037 Québec inc., of which he is the second shareholder, the director and the president.[11] The Initial and Amended OM indicate that the Bonds will distributed through "Selling Agents". In fact, it appears from the 45-106F1 Report of Exempt Distribution forms that distributions were done only through Cape Cove. In reviewing these forms, it further appears that Cape Cove was paid compensation totalling $266,087 in relation to the distributions of bonds for their services.

19.2. Link with Calixa Partners: Silvermont Finance signed an agreement with Calixa Partners to act as an advisory committee.[12] Calixa's role is at the heart of the Corriveau Judgment. Agro Tech[13] and Malina[14] both gave Calixa a "Mandat de gestion administrative" and the results led to very preoccupying transactions set out in the demand giving rise to the Corriveau Judgment. It is therefore with great concern that one notes that Calixa has also been retained by Silvermont "in an advisory committee role for this offering". Tzaferis' testimony shows that Calixa Partners's advisory committee is Gavriil for all intents and purposes. Gavriil, using his pseudonym, it is indicated on his business card that he is its "Chief Operating Officer". Gavriil has been sanctioned by the Court of Quebec[15] and his certificate was permanently striken with the AMF (*radiation permanente du certificate émis par l'Autorité des marches financiers*).[16]

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8 Exhibit P-33.
9 *Ibid*, p. 14.
10 Exhibit P-3.
11 Exhibit P-8.
12 Exhibit P-34, p. 18.
13 Exhibit P-24.
14 Exhibit P-28.
15 Exhibits P-14 and P-15.
16 Exhibits P-12 and P-13.

19.3. Transactions with Green CBD: Finance Silvermont, Capital Silvermont, Tzaferis and a number of companies linked to Tzaferis have all received sums from Green CBD totalling $695,000. As more fully explained in the MarDi Judgment, Green CBD has been put into receivership amongst other reasons for its actions with regard to an issuer, Agro Tech. Hence, these dealings between Silvermont and other related persons or entities on the one hand and Green CBD on the other hand raises grave concerns.

19.4. Use of funds: the funds raised by Silvermont Finance are to serve a very specific purpose as set out below in the OM. There is nothing in the record which somehow comforts the Court that the funds have indeed been used by Silvermont for this purpose:[17]

> The Corporation is raising funds to provide Loans to Borrowers that meet the Corporation's lending criteria. The Corporation intends to build a diverse portfolio by funding Loans to Borrowers secured by Hypothecs, Mortgages, guarantees, personal and/or corporate guarantees, liens, charges and other forms of collateral. The Corporation will also make Venture Capital Investments in which Silvermont shall have an active role as explained in this section.
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> The Corporation will actively seek to originate Loans from mortgage brokers, finance consultants, accountants, public advertisements and through other loan origination avenues or affiliates. The Corporation will provide Loans to Borrowers whom it regards as creditworthy despite credit histories that limit their access to traditional sources. The Corporation's customer base will consist of a large variety of Borrowers including corporations, business owners and individuals.

19.5. Financial statements: Always on the theme of use of funds, no financial statements nor notices of gross proceeds have been filed by Silvermont Finance since three years. The securities offered to investors by Silvermont Finance are not subject to continuous reporting and disclosure obligations which would apply to a "reporting issuer". Nevertheless, in order to ascertain whether the funds are being used as intended, yearly financial statements and notices providing for use of gross proceeds must be filed as was expressly provided for in the notice and applicable regulations:

> The Corporation is required, however, to file its audited annual financial statements within a hundred and twenty days after the end of each of its financial years with the applicable securities commissions and provide a copy thereof to each subscriber in Québec, Ontario, Alberta, Saskatchewan, New Brunswick, and Nova Scotia that subscribes for Bonds pursuant to the "offering memorandum" exemption under s. 2.9 of

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[17] *Ibid*, p. 11.

NI 45-106 (the "OM Exemption"). Additionally, the Corporation is required to provide:

> (i) to the abovementioned subscribers, a notice detailing the use of the aggregate gross proceeds raised by the Corporation under the OM Exemption; and
>
> (ii) to subscribers in Ontario, New Brunswick, and Nova Scotia who subscribe for Bonds pursuant to the OM Exemption, a notice within ten days of the occurrence of any of the following events: (a) a discontinuation of the Corporation's business; (b) a change in the Corporation's industry; or (c) a change of control of the Corporation.

19.6. Discrepancies in funds collected: The 45-106F1 filings that span over 2018 and 2019 indicate that Silvermont distributed bonds to 222 clients for a total sum of $3,59M. However, Cape Cove's records indicate that 264 of its clients bought bonds for a total value of $4,56M.

19.7. Majority shareholding of Knightswood: Both the initial and Amended OM indicate that 60% of the shareholding is held by Knightwood. This is an important consideration for investors because it "ensures that the Bonds issued by the Corporation pursuant to the present Offering qualify as Deferred Plan investments",[18] namely, to qualify for FSAs, RRSPs, RSEPs or RRIFs.[19] However, the *État de renseignements d'une personne morale au registre des entreprises* does not indicate that Knightswood is a shareholder of Finance Silvermont.[20]

[20] Silvermont Capital was incorporated in 2015. Tzaferis is its president and one of its directors. It is held by two shareholders, Target Capital Inc. and Elvegast Capital Inc.[21] Although no notices have been filed, it appears as a result of filings that it has raised $371,000 from 5 investors by selling A and D bonds.[22] Silvermont Capital has received $20,000 from Green CBD but is unable to explain for what purpose, the cheque and the cheque stub providing no greater information.[23]

[21] Hence, on the basis of these allegations, the AMF amply shows, in many key aspects, that it has reasonable grounds to believe that each of paragraphs 19.1 1°) to 4°) of the *Act* have been triggered and this is why the Immer Judgment was rendered.

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18 *Ibid*, p. 10.
19 *Ibid*, p. 22.
20 Exhibit P-35.
21 Exhibit P-36.
22 Exhibit P-37.
23 Exhibit P-52, p. 30.

2. The seven factual themes raised by Silvermont

[22] The Court prefaces its discussion by reiterating what the Court of Appeal has said in *Rizzuto* when discussing the standard by which the declaration in support for a search warrant must be measured, which the Court finds to be transposable to the present contestation: A reviewing judge should not conduct "a piecemeal dissection of individual items of evidence shorn of their context in a vain search for alternative exculpatory inferences".[24]

[23] With all due respect for the well-articulated contestation of its most able counsel, the Court is of the opinion that it is precisely such a piecemeal dissection that Silvermont is trying to have the Court carry out.

[24] Nothing in the affidavit addresses the fundamental point that there is no explanation whatsoever where over $4,56M of investors' money has gone and why Silvermont should be allowed to run roughshod over regulatory bulwarks a day longer. If Silvermont had its way, the Court would simply shrug its shoulders at Silvermont's unacceptable management practices and rely on vague representations that Silvermont will put its house in order in due course. In the meantime, the investors will be given no assurances that their assets are being properly dealt with. Such a hands-off approach is clearly not what is called for under the *Act*.

[25] This having been said, the Court will provide its comments with regard to each of Silvermont's arguments and will explain why they do not meet the criteria set out by the honourable Justice Dalphond in *Marciano* to cancel the Immer Judgment.

2.1 Allegedly false or misleading information with respect to Gavriil in the Offering Memorandums

[26] Silvermont raise three sub-issues relating to this first ground of attack.

[27] First, Silvermont Group argues that the AMF interviews of Gavriil cannot lead the AMF to conclude that Gavriil was the only person on the Calixa Partners advisory committee, but rather that these interviews should have lead the AMF to the conclusion that he was part of a committee comprised of 10 to 15 individuals. This first statement is plainly wrong. Gavriil's testimony is very confusing as to who does what in Calixa Partners and what the "advisory committee is".[25] When Gavriil is examined in February and April 2021, he explains that in 2021, Calixa Partners was just him but "that there might have been other people in the past".[26] Although Calixa Partners is owned by Nick Tzaferis and he is its only director at least until early January 2021, he has no clue of who is doing

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24 *R.* c. *Rizzuto* 2021 QCCA 1789, par. 28, citing *R.* v. *Nero*, 2016 ONCA 160, par. 68; leave to appeal denied, 2016 no. 36984; *R.* v. *Herta*, 2018 ONCA 927, par. 21.

25 Exhibits D-1 and D-2.

26 Exhibit D-2, p. 26.

what.[27] His affidavit which indicates that he has no "day-to-day knowledge" of Gavriil's activities and that he does not know how come Gavriil was using a business card indicating that he was COO of Calixa Partners is disconcerting. The Court finds that indeed it is reasonable to conclude that Gavriil carries out all of Calixa Partners' activities. In particular, Gavriil does "due diligence" work on eventual investments.[28] The product of this due diligence is provided to Cape Cove and to issuers who seem to defer to Cape Cove for their investment decisions, including Silvermont.[29] The 10 to 15 person committee which Tzaferis refers to is not the Calixa Partners "advisory committee", but rather what Gavriil calls a "product review committee" of Cape Cove,[30] and which is called a "séance du comité de selections de produits" in the email which Tzaferis files.[31] The fact that Tzaferis conflates Calixa Partners' advisory work with Cape Cove's activities is disquieting, not least for the reason that Cape Cove is acting as Silvermont's selling agent.

[28] Secondly, Tzaferis explains that "Gavriil's role and intentions with respect to Cape Cove was disclosed to the AMF in 2019".[32] The AMF admits that Gavriil came to see them in February 2019, to denounce the activities that were being carried out by another broker. The AMF's investigator, Jean-Pierre Aubé, admits in an affidavit dated December 13, 2021 that at this point he learned of the following:

> 13. Gavriil a mentionné qu'il était présentement consultant pour des émetteurs et pour des sociétés en recherche de financement par l'entremise de Calixa Capital Partners (« **Calixa Partners** »), une firme de conseils stratégiques, et qu'il souhaitait que l'Autorité puisse l'inscrire de nouveau à titre de professionnel dans le domaine financier, malgré ses antécédents judiciaires datant de plusieurs années.
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> 19. Il est ressorti des rencontres de 2019 susmentionnées que Gavriil avait une implication chez Calixa Partners et chez Cape Cove, laquelle implication nous a été divulguée par Gavriil comme étant de la « consultation » sans accès à de l'information réservée aux inscrits auprès de l'Autorité et sans pratique illégale;

[29] The Court agrees with Silvermont that for the sake of transparency, it would have been preferable for the AMF to divulge this fact to the Court. If indeed Gavriil's mere presence in the Cape Cove Calixa environment as a "consultant" is a source of great preoccupation for the AMF, it is indeed surprising that the AMF seems not to have busied itself with this information as soon as it was provided to it. The fact that interviews were only conducted with Gavriil in February 2021, and that an investigation was only formally instituted in March 2021[33] is unfortunate. However, the Court is not dealing with

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27 Exhibit D-26, p. 19 and following.
28 Exhibit D-1, p. 40 and 41.
29 Exhibit D-2, p. 20.
30 Exhibit D-1, p. 51.
31 Exhibit D-3; see also his testimony exhibit D-26, p.16.
32 Affidavit of Nick Tzaferis dated December 8, 2021.
33 Exhibit D-1.

administrative or penal sanctions, but rather with receivership. The fact that the AMF may have dragged its feet is certainly not something which must detract from the *Act*'s objectives to protect investors.

[30] Finally, Silvermont Group sets forth that "Gavriil's involvement as one of many on the advisory committee or his involvement as a consultant for Calixa Partners is in no way against the law, no contrary to any guideline of provision". That Gavriil gravitates around various corporations may indeed not in of itself be sufficient to warrant receivership. However, it is clearly a fact that must be taken into account. Gavriil has not merely been sanctioned with a fine. The Comité de discipline of the Chambre de la sécurité financière has ordered the « radiation permanente du certificat de l'intimé émis par l'Autorité des marchés financiers sous le numéro 114 165 ».[34] Furthermore, when he was sanctioned by the Quebec Court, the Court made the following remarks which clearly indicate that there was a clear expectation that he would not be back in the financial domain six years later masterminding the raising of millions of dollars of private investments:[35]

> [16] Aujourd'hui, il n'est plus impliqué dans le domaine financier. Depuis les évènements, il a fait faillite et a tout perdu. Il gagne maintenant sa vie comme peintre en bâtiment pour un salaire annuel de 20 000$. Son épouse travaille comme esthéticienne pour le même salaire. Ils habitent, avec la mère du défendeur, un duplex lourdement hypothéqué.
>
> (...)
>
> [37] Dans l'ensemble, en raison notamment de son nouveau travail, il apparait clair que l'imposition d'une peine n'est pas nécessaire pour dissuader le défendeur de commettre de nouvelles infractions, ni pour le conscientiser par rapport à son comportement.

[31] It is of grave concern, as the Demande shows, that Gavriil was given, a mere five years later, free hand to lead Capital Partners, Cape Cove, Agro Tech, Malina and Green CBD. In this perspective, his past cannot be overlooked and his involvement should not have been hidden from investors.

[32] In conclusion, this first factual theme has not raised important facts that have prejudiced Silvermont, and if it did, the Immer Judgment would be granted again on the basis of a corrected record.

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34 Exhibit P-13.

35 Exhibit P-15, reported as *Autorité des marches financiers* c. *Gavriil*, 2012 QCCQ 572.

2.2 AMF's misrepresentations by client K.W.

[33] Silvermont take issue with paragraphs 163-164 of the Demande which read as follows:

> 163. De plus, à l'hiver 2019, Gavriil a fait des représentations à une cliente quant à des rendements de l'ordre de 14% dans Finance Silvermont et il l'a incité à y investir pendant cette fenêtre d'opportunité.
>
> 164. À ce moment, la cliente ignorait la réelle identité de Gavriil, tout comme elle ignorait ses antécédents judiciaires.

[34] Silvermont indicates that these two paragraphs mischaracterize the client's testimony. K.W. dealt with Cape Cove's investment representative, Michelle Martel and not Gavriil and it was Martel who made the recommendations. In addition, the client's links on various fronts with Martel and Cape Cove make her an unreliable witness. Furthermore, there was no convincing proof that 14% returns were actually represented as various percentages were discussed. Finally, it is the OM which must govern and they clearly spell out the risk.

[35] It is true that K.W.'s testimony was not as categorical as paragraph 163 would lead the reader to believe as to Gavriil's involvement as is more fully discussed in the Green River Judgment. However, one takes from her testimony that her representative was consulting Gavriil who weighed heavy in Martel's recommendations.

[36] Also, the Court agrees with Silvermont that the impression which is left after listening to the whole recording is that various percentages of returns were discussed, but that 14% was by no means a firm figure on which the client could rely on.

[37] This however, with all due respect, misses the main point. The fact is that Gavriil is clearly instrumental even though not as openly as these paragraphs suggest.

[38] The purpose of these two paragraphs is not what representations he would have made, but rather that he was active in recommending that bonds be purchased. The full recording does not contradict this assertion.

[39] In any event, even in accepting Silvermont's qualifications of the interview of the client, the Immer Judgment would be granted again on the basis of a corrected record.

2.3 Transfers made by Green CBD

[40] Silvermont argues that the payments by Green CBD are not material. Tzaferis personally "only" received $4,650. Furthermore, Silvermont Finance "only" received close to $10,000 while Silvermont Capital received close to $20,000. Finally, with regard to the balance of close to $660,000, Silvermont makes the bold statement: "the allegations with respect to the other companies, whom are not defendants, are not relevant to the present

proceedings and for which no substantive allegations of impropriety have been made, all of which are private companies in any case".

[41] The Court does not find these explanations satisfactory. The failure to clarify the use of the very substantial sums paid by Green CBD to 9368-2037 Québec inc.[36] is unacceptable and does not serve to dissipate the haze engulfing Silvermont's assets.

[42] No important facts were therefore omitted by the AMF. In any event, the Immer Judgment would be rendered again, even if the Court were to take in the explanations as to the use of certain funds. The great proximity between Tzaferis and Gavriil through the various corporations when placed against the backdrop of an utter lack of information as to the use of the $4.56M received from investors by Silvermont Finance, increases the Court's unease as to the inexplicable lack of information regarding Silvermont Finance's assets and confirms that the appointment is necessary to protect the public in the context of an investigation.

2.4 Difference between Finance Silvermont's declared investments and Cape Cove's declared investments

[43] The Forms 45-106F1 which Silvermont Finance has filed evidence that the securities it has distributed to 222 clients total $3,59M. However, the records of Cape Cove indicate that 264 clients purchased Silvermont Finance bonds totalling $4.56M.[37] This difference of close to $1M shows that the AMF has reasonable grounds to believe that there is an inexplicable deficiency in Silvermont Finance's assets, within the meaning of s. 19.1 1[0]) of the *Act*.

[44] Silvermont explains that these differences may be "easily explainable" as they could flow from two discrepancies, namely: that redemptions are not taken into account for Silvermont and that the time periods over which the investment amounts were calculated are not the same. Hence, Silvermont indicates that "it is to be expected that the amounts declared by Silvermont, on the one hand, and Cape Cove, on the other hand, are no consistent given that any combination of the above mentioned elements would necessarily result in a discrepancy".

[45] The Court finds these explanations wholly unsatisfactory. First of all, what should be an "important fact" that was allegedly mischaracterized or hidden is nothing more than a hypothesis. More is needed to sway the Court. Much more. Secondly, if the discrepancy is indeed due to the fact that the periods being compared are not the same, than that is so because no 45-106F1 forms were produced by Silvermont for alleged distributions of bonds made to investors after 2019. This is concerning and is evidence of unacceptable management practices carried out by Silvermont. Finally, redemptions of bonds cannot explain any discrepancy. The 45-106F1 forms attest to initial distributions. Redemptions

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36 Exhibit P-52: there are generally no notes on the cheques and if there are, they are enigmatic.

37 Exhibit P-44.

would be carried out after these initial distributions. It is these initial distributions which come up short by $1M. If there were indeed redemptions, Cape Cove's total should be smaller than Silvermont Finance's, not greater.

[46] No important facts are therefore brought to light which could correct the record and which could lead the undersigned to review the Immer Judgment. Well to the contrary. These additional facts comfort the Court further that the need for a receivership is inescapable.

2.5 Finance Silvermont's financial statements and notice of the use of the aggregate gross proceeds in accordance with Form 45-106

[47] Sub paragraph 2.9 (17.5) of the *Regulation 45-106 on prospectus exemption,*[38] prescribes that an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each security holder. These financial statements must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate proceeds.

[48] The value of the investment is linked to the loans or the investments made. Investors may be lulled into a false sense of security if the only information they receive are deposit of periodic interest payments with the trustee Computershare. The mere payment of interest does not assure them that there is indeed a solid asset base generating the interest payments which will ensure repayment of the bonds when they expire.

[49] As the Supreme Court indicates in *Branch*, many of the extensive regulations and requirements set out by the provincial securities commissions "are fundamental to maintaining an efficient, competitive market environment in a context where imperfect information is endemic" and are "essential to prevent and deter abuses of such asymmetries of information and therefore, to maintain the integrity of the securities system and protect the public interest".[39] The financial statements and the 45-106F16 forms relating to the use of gross proceeds specifically serve to remedy this asymmetry of information.

[50] Acting in an exempted market such as the one Silvermont operates in does not mean it is free from regulation. As is most aptly explained by the Alberta Provincial Court in *R.* v. *Aitken*, exempted issuers are not "absolved from the responsibility of supplying investors with accurate and transparent information".[40] "Honest, accurate, fair and transparent representations from securities issuers is a cornerstone requirement" of

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38 CLRQ c. V-1.1, r. 21.
39 *British Columbia Securities Commission* v. *Branch*, [1995] S.C.R. 3, par. 77.
40 *R.* v. *Aitken*, 2020 ABPC 129, par. 149.

securities legislation.[41] Regulatory requirements, conditions and restrictions must be "strictly complied with".[42]

[51] Despite the clear regulatory requirements which Silvermont Finance itself lays out in black and white in the OM, and despite having raised $3.59M or $4.56M, since three years, no financial statements have been produced which would reassure investors that Silvermont Finance's business is being carried out as was undertaken in the Initial and Amended OM.

[52] How many yearly financial statements are missing? During the hearing, there was uncertainty whether Silvermont's first financial year was 2018 or 2019. Upon closer review of all the exhibits filed, the Court notes that the audit engagement letter of PSB Boisjoli signed by Tzaferis on August 31, 2021, calls for an audit of the financial statements as at May 1, 2018, April 30, 2019 and April 30, 2020.[43] By the time of the Immer Judgment hearing, the financial statements as at April 30, 2021 are also outstanding. Hence, four annual financial statements are missing. Furthermore, no 45-106F16 forms were filed which detail the use of the aggregate gross proceeds raised by the Corporation. Tzaferis claims that this can only be done after the financial statements are filed.

[53] Hence, more than three years after the first funds were raised, the investors and the Court are totally in the dark as to what has been done with the funds.

[54] According to Silvermont Finance, this is a temporary situation which is due to factors out of its control. By providing the following explanations, it blames everyone but itself for the delays in filing the financial statements:

54.1. Hiring of BGK Crowe: they would have been hired "at the end of 2019". The retainer cheque is dated September 15 2019, for a retainer invoice dated August 9, 2019. The cheque was therefore made out after the 120 day delay.[44]

54.2. COVID: BGK Crowe had allegedly begun the mandate when COVID hit in March 2020. However, March 2020 is a full six months after the date of the retainer cheque. No explanation is given why no work was completed in that six month period.

54.3. Doubling of fees: apparently, once BGK Crowe was ready to proceed with the audit, they indicated they would double their fees. No precise date is given nor exhibit filed to indicate when Tzaferis was advised of this and how.

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41 *Ibid*, par. 154.
42 *Ibid*, par. 150.
43 Exhibit D-14.
44 Exhibit D-11.

54.4. Hiring of Raymond Chabot Grant Thornton: RCGT provided a proposal on November 30, 2020. Again, a full 45 days passed before Tzaferis signed the mandate on January 15, 2021.[45]

[55] Clearly none of this demonstrates that management is adhering to sound management practices. However, Tzaferis' explanations become even more unconvincing. A further seven months intervene after the signing of the RCGT mandate letter before the withdrawal of RCGT in the following context:[46]

> 48. As Raymond Chabot Grant Thornton was about to begin the audit, Finance Silvermont was informed of proceedings before the Tribunal Administratif des Marchés Financiers in March 2021 and proceedings before the Superior Court in July 2021, both involving Cape Cove;
>
> 49. Tzaferis was informed during a subsequent telephone conversation that Raymond Chabot Grant Thornton considered that it may be in a conflict of interest with respect to the proceedings mentioned above and therefore resigned in August 2021, the whole as it appears from a Letter dated August 4, 2021, produced herewith as Exhibit D-13;

[56] Finally, a new mandate letter was signed and as mentioned above in favour of PSB Boisjoli.

[57] Brazenly, Silvermont concludes:

> Manifestly, Finance Silvermont was in the process of completing the audit of its financial statements, contrary to the implication of the AMF which seeks to suggest that Finance Silvermont was evading this responsibility, which could not be further from the truth.

[58] The Court disagrees. There are indded many indications that Silvermont is evading its responsibility. However, in order to justify the receivership, all the AMF must show is that it has reasonable grounds to believe that Tzaferis is carrying out his administrative duties in an unacceptable manner and that an investigation is required for the protection of the public. Obviously, three years after the first investments and with still no financial statements in sight, the receivership is entirely warranted on these grounds.

2.6 Participation of Knightswood

[59] Intially, Silvermont Finance inc. is incorporated under the Quebec *Business Corporations Act* on January 12, 2018 but this corporation was dissolved on October 16, 2018.[47] The first shareholder was Knightswood Holdings Ltd. and its directors were Jana Di Giovani and Elpida Tzaferis.

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45 Exhibit D-12.
46 Additional affidavit of Nick Tzaferis dated December 8, 2021.
47 Exhibit P-35.

[60] Apparently, Silvermont's corporate attorneys then recommended that the corporation should be dissolved and re-registered as a Canadian corporation. They then proceeded to a series of actions which are explained as follows in the detailed contestation:[48]

i. First, the shareholder of Finance Silvermont, 9159908 Canada Inc., adopted a resolution to dissolve the corporation on September 18, 2018, the whole as it appears from a shareholders' resolution of even date, produced herewith as **Exhibit D-16**;

ii. Second, the shareholder of Finance Silvermont, 9159908 Canada Inc., adopted another resolution on September 18, 2018 to re-designate the issued and outstanding 100 Class A shares into 4,000 Class A Preferred shares and 1,000 Class B Common shares, the whole as it appears from a second shareholders' resolution dated September 18, 2018, produced herewith as **Exhibit D-17**;

iii. Third, the director of Finance Silvermont adopted a resolution whereby the abovementioned shares were to be redistributed as described above and resolved to issue 6,000 Class A Preferred shares to Knightswood, the whole as it appears from a Directors' resolution dated September 18, 2018, produced herewith as **Exhibit D-18**;

iv. Fourth, both 9159908 Canada Inc. and Knightswood subscribed to the above described shares from Finance Silvermont on September 18 and 21, 2021 respectively, which Finance Silvermont accepted, the whole as it appears from Subscription letters and acceptances, produced herewith as **Exhibit D-19**;

v. Fifth, Finance Silvermont issued share certificates to 9159908 Canada Inc.,for 4,000 Class A shares and 1,000 Class B shares, and to Knightswood for 6,000 Class A Preferred Shares of the corporation, the whole as it appears from Share Certificates, produced herewith as **Exhibit D-20**;

vi. Lastly, on September 21, 2018, Knightswood and Finance Silvermont signed an Administration agreement, produced herewith as **Exhibit D-21**, and an Option agreement, produced herewith as **Exhibit D-22**;

[61] Despite these explanations, the Court still finds that two problems persist: (i) the Administrative Services Agreement and the Option Agreement is signed by Knightswood with Silvermont Finance inc. "a company incorporated under the laws of the Province of Quebec"[49], the dissolved corporation and not the active CBCA Silvermont Finance inc.; and (ii) the *État de renseignement d'une personne morale au registre des entreprises* does not indicate that Knightswood is a shareholder.

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48 Detailed Contestation, par. 64.

49 Exhibit D-21.

[62] No explanation is provided with regard to the first problem. Silvermont alleges that "Finance Silvermont, as the "Subsidiary", has been paying Knightswood, as the "Parent", a quarterly administration fee. However, upon review of the exhibits filed in support of this allegation, there is in fact evidence of only two such fees, namely 2018 Q4 and 2019 Q1. Is this an indication of a greater underlying problem? The Court does not know but it is concerned that his may have detrimental effects on shareholders.

[63] With regard to the second problem, s. 35 (5) of the *Act respecting legal publicity of enterprises,*[50] clearly provides that the registration declaration of a legal person must contain the name of the three shareholders controlling the greatest number of votes, and identify the shareholder holding an absolute majority. Registrants are responsible for verifying the legality and accuracy of the declaration filed with the registrar.[51] The information must be updated once a year.[52] In the present case, the *État de renseignement d'une personne morale au registre des entreprises* does not indicate that Knightswood is a shareholder. It has not been updated in 2019, 2020 or 2021 as required by law.

[64] Silvermont's assertions are therefore fundamentally flawed when it states the following:

> 67. It appears that the information contained on the Registre des entreprises du Québec was not properly filed in that Finance Silvermont (REQ 1173355133) indicates that Knightswood is a shareholder whereas, in reality, this corporation was dissolved and it is Finance Silvermont (REQ 1173970642), whose majority shareholder is Knightswood;
>
> 68. AMF chose to make allegations based solely on information contained on the CIDREQ, without making any inquiry with Finance Silvermont or making the appropriate verifications.

[65] The AMF is fully entitled under ss. 98 (6.1) of the *Act respecting legal publicity of enterprises* to make allegations based solely on the content of the Registre, and in particular as regards shareholders. Indeed, this information "may be set up against third persons from the time it is recorded in the statement of information and is proof of its content for the benefit of third persons of good faith".

[66] Be that at is may, the inscriptions at the register are further evidence of Silvermont's poor management. Clearly, no important facts are therefore brought to light which could correct the record and which could lead the undersigned to review the Immer Judgment.

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50 CLRQ c. P-44.1.
51 *Ibid*, art. 39.
52 *Ibid*, art. 45.

2.7 Capital Silvermont

[67] Silvermont Capital raises the fact there is only one allegation made against it, namely that it received a $20,000 payment from Green CBD.

[68] The Court is not hearing an appeal of the Immer Judgment. No facts have been brought to light which would show that the facts alleged by the AMF are false. The contestation cannot succeed. The Court adds that given the fact that five investors invested a total of $370,000 in Silvermont Capital, that there is no offering memorandum, that Silvermont Capital appears to be in the same business as Silvermont Finance, that it is being led by Tzaferis and that it has received funds from Green CBD with no explanation, the protection of the public warrants further investigation by the receiver.

2.8 Conclusions

[69] In summary, the Court finds many of the arguments raised in the context of the seven factual themes to be unconvincing or wrong. Even in taking the most generous approach possible in favour of the Defendants, and accepting that many of the facts they raise are indeed important, under the "second approach" espoused by the honourable Dalphond in *Marciano*, the Immer Judge would be granted again.

Final Remarks

[70] It may well be that proper explanations will be provided by Tzaferis which alleviate the concerns giving rise to the receivership.

[71] The Court will certainly not support a uselessly drawn out receivership which is not in the investors' interest. With Tzaferis' cooperation, the Receiver will be able to carry out its investigation and hopefully ascertain that the assets do exist and that they are properly managed and accounted for.

[72] Section 19.11 of the *Act* allows the Court to modify the powers of the Receiver upon application of an interested party. It can even end the receivership if it is not in the interest of the investors.

[73] Even though it dismisses the contestation, the Court will not order payment of costs as such an award will simply harm the investors in whose interest the Court has ordered the receivership.

FOR THESE REASONS, THE COURT:

[74] **DISMISSES** Silvermont Finance inc. and Silvermont Capital inc.'s contestations;

[75] **THE WHOLE,** without costs.

CHRISTIAN IMMER, J.S.C.

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Hearing date: December 15 and 16, 2021