

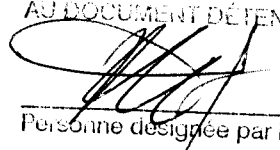
SUPERIOR COURT

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-17-101783-184

DATE: 26 JANVIER 2018

26-01-2018
COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

Personne désignée par le greffier

PRESIDING: HON. JUGE FRANCE DULUDE JCS

GRISEL ALONSO

vs.

BMO BANK OF MONTREAL

and

VICTOR ELMALEH

MERCEDES ELMALEH

1925333 ONTARIO INC. D/B/A/ CLEARTECH COMPUTING SYSTEM

ENGAGE MARKETING GROUP, INC.

M3 DESIGNS, LP

Petitioner

Respondent

Mis-en-cause

JUDGMENT

- [1] **THE COURT**, on the *Application for the taking of evidence at the request of a Court of a foreign country* (the "Application");
- [2] **HAVING** examined the Application, the Exhibits and the Affidavit of Petitioner's representative and having heard Petitioner's counsel;
- [3] **WHEREAS** the proof of the allegations has been made;
- [4] **CONSIDERING** that the Application is well founded in fact and in law;

FOR THOSE REASONS:

- [5] **GRANTS** the *Application for the taking of evidence at the request of a Court of a foreign country*,
- [6] **SHORTENS** the delay for the service, the filing and the presentation of this Application;
- [7] **COMES IN AID OF AND GRANTS ASSISTANCE** to the United States District Court (Southern District of Florida) to recognize and give full force and effect in the province of Quebec to the *Request for International Judicial Assistance to the Superior Court of Quebec, Canada (Letter Rogatory)* (Exhibit R-9 of the Application);
- [8] **ORDERS** that the Respondent shall deliver the documents described on pages 6 to 8, inclusive, of the *Request for International Judicial Assistance to the Superior Court of Quebec, Canada (Letter Rogatory)* (R-9) to Gowling WLG (Canada) LLP, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4, Attention: Mila Badran, within two weeks of the date of the present order;
- [9] **ORDERS** that an appropriately knowledgeable representative (or representatives) of the Respondent shall appear, if requested by counsel for the Petitioner, on dates to be agreed upon or fixed (if no agreement is possible) in February 2018 at Gowling WLG (Canada) LLP, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4, at the courthouse located at 1 Notre Dame St. East, Montréal, Québec, or at such other location as may be agreed upon or ordered, to identify and authenticate the documents produced according to the *Request for International Judicial Assistance to the Superior Court of Quebec, Canada (Letter Rogatory)* (R-9) and to be examined under oath by counsel for the Petitioner regarding the documents, and have the testimony transcribed in writing by a qualified court reporter and/or videotaped by a qualified videographer, as described in the *Request for International Judicial Assistance to the Superior Court of Quebec, Canada (Letter Rogatory)* (R-9);
- [10] **ORDERS** Gowling WLG (Canada) LLP to secure payment of the indemnity which may be due to the Respondent if it is summoned to give evidence, the whole pursuant to Article 505 of the Code of civil procedure;
- [11] **ORDERS** that the Petitioner may apply to the Court for further direction as may be necessary to give effect to the *Request for International Judicial Assistance to the Superior Court of Quebec, Canada (Letter Rogatory)* (R-9);
- [12] **THE WHOLE** without costs.



Francis J. S.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-61390-CIV-ALTONAGA/Goodman

GRISEL ALONSO,

Plaintiff,

vs.

VICTOR ELMALEH, et al.,

Defendants.

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
TO THE SUPERIOR COURT OF QUEBEC, CANADA (LETTER ROGATORY)**

The United States District Court for the Southern District of Florida presents its compliments to the Quebec Superior Court, District of Montreal, in the Province of Quebec, Canada, and requests judicial assistance to compel the production and authentication of documents as described in this Request to be used in a civil proceeding before this Court in the above-captioned matter, and to compel, if necessary, the attendance of a witness at an oral deposition in the Province of Quebec concerning these documents. This Court requests the assistance described herein as necessary in the interests of justice.

SUMMARY OF ALLEGATIONS

1. This action, *Alonso v. Elmaleh*, Case No. 17-cv-61390 (“Action”) is ancillary to the United States Securities and Exchange Commission’s (“SEC”) action against Frederic Elm a/k/a Frederic Elmaleh (“Fred Elm”), Case No. 15-cv-60082 (the “SEC Action”), in which Ms. Alonso was appointed Receiver.

The SEC Action

2. The following is a summary of the SEC Action, as alleged by Grisel Alonso as Receiver for Elm Tree Investment Advisors, LLC (“ETIA”), Elm Tree Investment Fund, LP (“ETIF”), Elm Tree 'e'conomy Fund, LP (“ETEF”), Elm Tree Motion Opportunity, LP (“ETMO”), and Etopia, LP (“Etopia”) (collectively, “Receivership Entities”).

3. The SEC commenced the SEC Action in the United States District Court for the Southern District of Florida on January 15, 2015.

4. The SEC's Complaint for Injunctive and Other Relief alleges that between no later than November 2013 to January 2015, Defendants Fred Elm and the Receivership Entities engaged in a fraudulent securities "Ponzi" scheme through the offer and sale of fraudulent investments that raised more than \$17 million from more than 50 investors (the "Fraudulent Scheme").

5. Fred Elm was the ultimate owner of the Receivership Entities and had the ability or ultimate right to control their operations. The Receivership Entities were used to perpetrate the Fraudulent Scheme by acting as conduits for funneling investor money to or from investors and to loot the Receivership Entities for the benefit of Fred Elm and his family members.

6. The SEC Action alleges that Fred Elm misappropriated at least \$2 million in investor funds to pay for personal items and expenses and by making improper payments including to his wife, Amanda Elm f/k/a Amanda Elmaleh.

7. On January 16, 2015, Judge William Dimitrouleas of the United States District Court for the Southern District of Florida entered an order in the SEC Action appointing Grisel Alonso as Receiver for the Receivership Entities (the “Receivership Order”). A true and correct copy of the Receivership Order is attached hereto as **Exhibit A**.

8. The Receiver was appointed pursuant to the Court's inherent equity powers to carry out the purposes of the SEC Action, which was brought pursuant to the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934.

9. Pursuant to the Receivership Order, the Receiver is ordered to, among other things, "[t]ake immediate possession of all property, assets and estates of every kind of [the Receivership Entities] ... and institute such actions and legal proceedings ... as the Receiver deems necessary ... against any transfers of money or other proceeds directly or indirectly traceable from investors in [the Receivership Entities]."

10. On February 10, 2017, upon motion by the Receiver, the Court expanded the Receivership to include Etopia. As such, Etopia is one of the Receivership Entities.

The Ancillary Action

11. The following is a summary of the Receiver's allegations.

12. The Action by the Receiver against Defendants Victor Elmaleh, an individual, Mercedes Elmaleh, an individual, 1925333 Ontario Inc. d/b/a Cleartech Computing System, a Canadian corporation, Engage Marketing Group, Inc., a Canadian corporation, and M3 Designs, LP a Delaware partnership ("Etopia Defendants") was brought pursuant to the Receivership Order, which, among other things, charged the Receiver with marshaling assets of the Receivership Estate for the benefit of defrauded investors and asserting causes of action as the Receiver deems necessary.

13. The Court has personal jurisdiction over Defendants pursuant to Section 48.193, Florida Statutes, because: (i) Defendants committed torts within the state; (ii) Defendants voluntarily participated and engaged in a business venture in this State, which is the Fraudulent Scheme from which the Receiver's claims arise; and/or (iii) Defendants have sufficient minimum

contacts with the State of Florida to satisfy due process requirements, such that the exercise or personal jurisdiction over them is fair and just.

14. Etopia was formed in or about late September or early October 2014, at a time after Fred Elm began receiving inquiries and requests for information from the SEC related to the other Receivership Entities and the Fraudulent Scheme. The Receiver has alleged that Fred Elm and Victor Elmaleh, and possibly other related individuals, opened Etopia in an attempt to receive new investment dollars and to continue the Fraudulent Scheme, described above, while avoiding detection by the SEC. Specifically, Etopia registration documents were filed naming Victor Elmaleh as the contact person on or about September 30, 2014.

15. The Receiver has alleged that Fred Elm and/or Victor Elmaleh: (i) marketed Etopia as Elm Tree Etopia Fund, LP, with ETIA as its General Partner and Fund Manager; (ii) listed ETIA as the primary contact for inquiries related to Etopia, including in marketing materials that contained ETIA's address and telephone number, and Fred Elm's e-mail address; (iii) solicited investments in Etopia from victims who also invested in the other Receivership Entities; and (iv) referred investors to the Receivership Entities in Florida.

WITNESSES AND DOCUMENTS REQUESTED

16. **Instructions:** The Receiver requests production of documents by BMO Bank of Montreal ("BMO Bank"), as those documents are kept in the ordinary course of business.

17. **Definitions:**

The term "document" is used in its broadest possible sense, and means any and all records, and any other tangible forms of expression, communication or information, or the recording or storing thereof, in BMO Bank's possession, custody or control, whether such documents are drafts or unfinished versions, originals, or annotated or nonconforming copies,

however or by whoever created, produced or stored (manually, mechanically, electronically, or otherwise) including writings, books, papers, files, minutes, summaries, records, analyses, plans, correspondence, memoranda, ledger sheets, schedules, invoices, account statements, reports, wires, telegrams, telexes, electronic mail, telephone logs, notes, or records of conversations of meetings, contracts, agreements, calendars, date books, work sheets, working papers, bills, records of payment, magnetic tape, tape recordings, disks, diskettes, disk packs, and other electronic media, microfilm, microfiche, date or memory storage devices, appointment books, diaries, notices and message slips.

The term "Receivership Entities" refers to Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia, LP, and all entities in which they have or had a controlling interest, including but not limited to all divisions, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, managing partners, limited partners, partnerships, and all aliases, code names, or trade or business named used by any of the foregoing.

The term "Victor Elmaleh" refers to Victor Elmaleh, and any of his representatives, attorneys, affiliates, predecessors, or successors.

The term "Mercedes Elmaleh" refers to Mercedes Elmaleh, and any of her representatives, attorneys, affiliates, predecessors, or successors.

The term "1925333 Ontario" refers to 1925333 Ontario Inc. d/b/a Cleartech Computing System, and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

The term "Engage Marketing" refers to Engage Marketing Group Inc., and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

The term "M3" refers to M3 Designs, and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

The term "Etopia" refers to Etopia, LP and any of its officers, directors, representatives, attorneys, predecessors, or successors.

The term "Ahmad Naqvi" refers to Ahmad Naqvi a/k/a Ahmad Naqvi, and any of his representatives, attorneys, affiliates, predecessors, or successors.

The terms "you" or "your" refers to BMO Bank of Montreal, and includes all its divisions, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, managing partners, limited partners, partnerships, and all aliases, code names, or trade or business named used by any of the foregoing.

The term "person" means any natural person or any business, legal or government entity, or association.

The term "concerning" means reflecting, relating to, referencing, referring to, describing, evidencing, or constituting.

The following rules of construction apply to this attachment:

- a. the term "any" shall include "all," and the term "all" shall include "any," as needed to make the request inclusive and not exclusive.
- b. the term "and" shall include "or," and the term "or" shall include "and," as needed to make the request inclusive and not exclusive; and
- c. the use of the singular form of any work includes the plural and vice versa.

18. **Requests:** Plaintiff seeks records in the possession, power, or control of BMO Bank, 129 St. Jacques, Floor 10, Montreal, Quebec, Canada H5A 1K8. Certain of the Defendants in this Action have one or more accounts at BMO Bank, which accounts received fraudulently

transferred funds from the Receivership. The Receiver seeks the following records from BMO Bank in support of her claims against the Defendants, for the time period of January 1, 2012 to present:

- i. All documents that refer, relate to, or reflect account no. XXXX-831, whether active or inactive, including but not limited to new account forms, account opening documents, any customer agreements, monthly account statements, checks, deposits, wire transfers, and any and all documents and information regarding any computer access programs or any other type of electronic account monitoring.
- ii. All documents that refer, relate to, or reflect account no. XXXX-172, whether active or inactive, including but not limited to new account forms, account opening documents, any customer agreements, monthly account statements, checks, deposits, wire transfers, and any and all documents and information regarding any computer access programs or any other type of electronic account monitoring.
- iii. All documents that refer, relate to, or reflect account no. XXXX-554, whether active or inactive, including but not limited to new account forms, account opening documents, any customer agreements, monthly account statements, checks, deposits, wire transfers, and any and all documents and information regarding any computer access programs or any other type of electronic account monitoring.
- iv. All documents that refer, relate to, or reflect any safe deposit boxes containing the personal property of Victor Elmaleh, Mercedes Elmaleh,

- any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi.
- v. All documents that refer, relate to, or reflect any other accounts held in the name of, or, to BMO Bank's knowledge for the benefit of or in trust for, Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, whether active or inactive, including but not limited to new account forms, account opening documents, any customer agreements, monthly account statements, checks, deposits, wire transfers, and any and all documents and information regarding any computer access programs or any other type of electronic account monitoring.
 - vi. All communications, including with any third party, that refer, relate to, or reflect any accounts held in the name of any of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi.


19. The evidence sought from BMO Bank is relevant not only to discovery in this Action, but it is also necessary for use at the trial, and would not otherwise be obtainable by this Court at the trial through this Court's compulsory process. Thus, the evidence so obtained will be used by the parties at the trial itself. The evidence sought in Quebec by this Request is necessary in order for this Court to do justice in this Action. Therefore, this Court respectfully requests that, in the interest of justice, the Quebec Superior Court issue appropriate orders, or other compulsory process, to compel the production of documents and testimony described above in this Request.

20. This Court further requests that the proper judicial authorities of Quebec cause the authenticated records to be delivered to Plaintiff's and Defendants' counsel.

21. Pursuant to 28 U.S.C. Section 1782, this Court stands ready to extend similar assistance to the Courts of Quebec in like cases.

22. The reasonable costs, including costs for copying of documents, and attendance fees typically granted by the Quebec Superior Court, will be borne by the Receiver.

DONE AND ORDERED in Miami, Florida this 30th day of November, 2017.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

N°:

DISTRICT OF MONTREAL
SUPERIOR COURT

GRISEL ALONSO

PETITIONER

VS

BMO BANK OF MONTREAL

RESPONDENT

and

VICTOR ELMALEH

MERCEDES ELMALEY

**1925333 ONTARIO INC. D/B/A/ CLEARTECH
COMPUTING SYSTEM**

ENGAGE MARKETING GROUP INC.

M3 DESIGNS, LP

MIS-EN-CAUSE

EXHIBIT R-9

M^e Mila Badran
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