

**Gusinsky v Genger**

2009 NY Slip Op 31824(U)

August 12, 2009

Supreme Court, New York County

Docket Number: 600426/2008

Judge: Jane S. Solomon

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. JANE S. SOLOMON

PART 55

Justice

VLADIMIR GUSINSKY,  
Plaintiff,  
-against-

INDEX NO 600426/2008

MOTION DATE 5/15/09

MOTION SEQ. NO. 004

SAGI GENGER,  
AG REAL ESTATE PARTNERS, L.P. and  
AG HOLDINGS COMPANY,  
Defendants.

MOTION CAL. NO.

The following papers, numbered 1-6, were read on this motion to/for partial summary judgment.

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits . . .	1-5
Answering Affidavits — Exhibits _____	6-11
Replying Affidavits _____	12-14

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Decision and Order.

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

DATED:

Dated:

8/12/09

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION  
JANE S. SOLOMON  
J.S.C.

*[Signature]*  
J.S.C.

[\*2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----X  
VLADIMIR GUSINSKY,

Plaintiff,

-against-

SAGI GENGER,  
AG REAL ESTATE PARTNERS, L.P. and  
AG HOLDINGS COMPANY,

Defendants.  
-----X

JANE S. SOLOMON, J.S.C.:

Index No. 600426/2008

**DECISION and ORDER**

Motion Seq. No. 003

Motion Seq. No. 004

**INTRODUCTION**

This is an action to recover on an accelerated promissory note. The Note is held by plaintiff Vladimir Gusinsky ("Gusinsky"). It was made by one of the defendants and secured by a pledge of another defendant's interest in the maker. The third defendant is the current principal of both the maker and the pledgor. Gusinsky moves for summary judgment. The motion is granted for the reasons set forth below.

**FACTS and PROCEDURAL HISTORY**

**A. THE NOTE**

Gusinsky loaned \$2.5 million to a Canadian entity called A.G. Land No. 1 Company ("AGL") pursuant to a Promissory Note dated July 24, 2001 (the "Note").<sup>1</sup> AGL, and related

---

<sup>1</sup> Affidavit of Vladimir Gusinsky, sworn to May 5, 2009 ("Gusinsky Affidavit"), attached as Exh. 1 to Reply Affirmation of Jason P. Criss, sworn to May 13, 2009 ("Criss Reply")

entities, were formed by Arie Genger ("Arie") for the purpose of investing in Canadian real estate.<sup>2</sup> At the time, AGL was wholly owned by AG Real Estate Partners, L.P. ("AGLP" ) and Arie was the sole shareholder of AGLP's general partner.<sup>3</sup> AGL now is known as AG Holdings Company ("AGH") and still is owned by AGLP.<sup>4</sup>

Under the Note, repayment of the principal was to be made in three annual installments of 10% of the total starting on July 24, 2008 with the balance due on July 24, 2011.<sup>5</sup> Interest at 6.5% per annum was payable annually, starting on July 24, 2003. Failure to make payment when due under the Note gives rise to an event of default. The Note provides that it "shall be governed by, construed and interpreted in accordance with the laws of the Province of Nova Scotia, Canada, without giving effect to principles of conflicts of law."<sup>6</sup>

Also on July 24, 2001, AGLP executed a "Pledge Agreement" in favor of Gusinsky, which provides that Gusinsky is

---

Affirmation"), ¶ 2.

<sup>2</sup> Affidavit of Arie Genger, sworn to May 6, 2008 ("Arie Genger Affidavit"), attached as Exh. 4 to Affirmation of Jason P. Criss, sworn to February 27, 2009 ("Criss Affidavit"), ¶¶ 3, 7.

<sup>3</sup> Arie Genger Affidavit ¶¶ 6, 15.

<sup>4</sup> *Id.* ¶¶ 1, 6.

<sup>5</sup> Note, attached as Exh. A to Third Amended Complaint, attached as Exh. 1 to Criss Affidavit.

<sup>6</sup> *Id.*

entitled to receive all distributions received by AGLP from AGH. The Pledge Agreement also gives him a security interest in AGLP's shares in AGH.<sup>7</sup> Then, by an agreement dated April 18, 2002 and entitled "Allonge to Promissory Note" (the "Allonge"), the parties converted the principal amount of the Note to C\$3,845,750<sup>8</sup> and adjusted the first three principal payments to C\$384,575.<sup>9</sup> The Allonge, which was executed by Gusinsky and by Arie for AGH, names AGH as the maker of the Note and states that it was made "FOR VALUE RECEIVED."<sup>10</sup>

The relationship of this obligation to the acquisition of real estate was as complex as such transactions can be. AGH, the maker of the note, owned 50% of AG Properties Company ("Properties"), which was the sole owner of entities that held title to certain Canadian real estate.<sup>11</sup> In 2004, Arie transferred his interests in AGLP and Properties to Sagi and his sister, Orly. Orly later transferred her interest to Sagi, giving Sagi control of AGH.<sup>12</sup> The remaining 50% of Properties at

---

<sup>7</sup> Pledge Agreement, attached as Exh. B to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation.

<sup>8</sup> C\$ is a symbol for the Canadian dollar.

<sup>9</sup> Allonge, attached as Exh. A to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation.

<sup>10</sup> *Id.*

<sup>11</sup> Arie Genger Affidavit ¶¶ 6-7.

<sup>12</sup> *Id.* ¶¶ 15-16.

[\* 5]

first was owned, beneficially, by Gilad Sharon, son of the late Prime Minister of Israel, Ariel Sharon.<sup>13</sup> In August 2004, Sagi wrote an e-mail that contained a valuation of Gilad Sharon's interest.<sup>14</sup> AGH then acquired that interest in September 2005 for C\$1 million; Sagi executed the stock purchase agreement on AGH's behalf.<sup>15</sup> These events led to Sagi's complete control of these entities and the underlying real estate.

In 2005, apparently as a result of the change in control, Sagi wrote a letter to his father, which Arie signed as well, to "memorialize our understanding in connection with the financing of the purchase of certain properties in Montreal, Canada".<sup>16</sup> This letter is referred to as the Assurance Agreement (the "Assurance"). In it, Sagi expressly acknowledged that "\$2.5 million was borrowed by [AGH] from [Gusinsky], per the terms evidenced by" the Note "in order to finance the acquisition of" certain properties.<sup>17</sup> The Assurance then discloses that those

---

<sup>13</sup> *Id.* ¶ 6.

<sup>14</sup> E-mail from Sagi Genger to Arie Genger (August 27, 2004), attached as Exh. G to Affidavit of Arie Genger, sworn to April 30, 2009, attached as Exh. 4 to Criss Reply Affirmation.

<sup>15</sup> Stock Purchase Agreement, attached as Exh. I to Affidavit of Arie Genger, sworn to April 30, 2009, attached as Exh. 4 to Criss Reply Affirmation.

<sup>16</sup> Assurance Agreement, attached as Exh. C to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation.

<sup>17</sup> *Id.*

properties had been sold and that the proceeds were distributed to Properties, which invested the funds in Riverside Properties (Canada) LP ("Riverside"). Riverside then acquired a new property in Montreal (the "New Property"). Finally, the Assurance states that "all funds received" by Properties or Riverside's general partner, Riverside General Partner LP ("Riverside GP"), "will be set aside for the full repayment of the" Note.<sup>18</sup>

Defendants made interest payments on the Note from 2003 to 2007, but Gusinsky alleges that some of them were for less than the required amount.<sup>19</sup> Some of the payments were made after Sagi began functioning as the principal of AGH.<sup>20</sup>

Starting with a letter dated in February 2008, Gusinsky sought payment of past due interest and the July 2008 principal payment. When the demands were not honored, he called defaults and accelerated the Note.<sup>21</sup> This lawsuit then followed. There is

---

<sup>18</sup> *Id.*

<sup>19</sup> Gusinsky Affidavit ¶ 6.

<sup>20</sup> *Id.*

<sup>21</sup> Letter from Vladimir Gusinsky to Sagi Genger (November 19, 2007), attached as Exh. G to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation; Letter from Vladimir Gusinsky to Sagi Genger (February 5, 2008), attached as Exh. D to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation; Letter from Vladimir Gusinsky to Sagi Genger (March 6, 2008), attached as Exh. E to Third Amended Complaint, attached as Exh. 1 to Criss Affirmation; Letter from Vladimir Gusinsky to Sagi Genger (October 31, 2008), attached as Exh. F to Third Amended

no question that the Note has not been paid in full. Instead, defendants contend that: (1) the Note and the Allonge are unenforceable because they were part of an illegal scheme to influence Israeli officials to ensure Gusinsky's safe passage; and (2) the Allonge also is invalid because it is not supported by consideration.

#### B. GUSINSKY LEAVES RUSSIA

In connection with the first of defendants' contentions, much information is presented. Gusinsky founded and was Chairman of ZAO Media Most ("Media Most"), a private Russian media company that owned a popular television channel ("NTV"), once the only nationally broadcast non-governmental station.<sup>22</sup> He also owned a Russian newspaper and magazine and has been an Israeli citizen since 1993.<sup>23</sup> After Vladimir Putin assumed power in 2000, Gusinsky claims that "NTV became a lightning rod for criticism from Kremlin officials, who were displeased with" Media Most's coverage of the actions of the Putin administration in Chechnya.<sup>24</sup>

In June 2000, Gusinsky was arrested by Russian authorities on charges of fraud, which were dropped after he

---

Complaint, attached as Exh. 1 to Criss Affirmation.

<sup>22</sup> Gusinsky Affidavit ¶ 11.

<sup>23</sup> *Id.* ¶¶ 11, 18.

<sup>24</sup> *Id.* ¶ 12.

signed an agreement transferring ownership of Media Most to a state related entity.<sup>25</sup> Gusinsky claims that the criminal case against him was politically motivated and was part of an attack on independent media outlets in Russia.<sup>26</sup> This assessment was shared by the Chairman of the United States Congress's Helsinki Commission, who characterized the arrest as "part of an all out assault against the most prominent remaining independent media organization in Russia."<sup>27</sup> The United States Department of State also described the government takeover of Media Most as "politically motivated, given the media company's often outspoken criticism of Russian government policies."<sup>28</sup>

Gusinsky left Russia after the charges were dropped, and he and Media Most took the position that the transfer agreement was unenforceable because it was coerced.<sup>29</sup> Russian officials then leveled additional charges, issued an international arrest warrant, and unsuccessfully sought his

---

<sup>25</sup> *Id.* ¶¶ 13-14.

<sup>26</sup> *Id.* ¶¶ 12-13.

<sup>27</sup> Press Release, Helsinki Commission on Security and Cooperation in Europe, *Helsinki Commission Chairman Decries Russian Media Figure's Arrest* (June 13, 2000), attached as Exh. 6 to Gusinsky Affidavit.

<sup>28</sup> Press Release, United States Department of State, *Closure of Independent Media in Russia Politically Motivated* (April 18, 2001), attached as Exh. 8 to Gusinsky Affidavit.

<sup>29</sup> Gusinsky Affidavit ¶ 15.

extradition from Spain and Israel.<sup>30</sup>

Interpol's Secretary General advised Gusinsky that Interpol would not act on the arrest warrant because the case against him had "a predominant political character."<sup>31</sup> In an August 2003 letter, Israel's Director of the Department of International Affairs, Ministry of Justice, stated that Israel had informed Russian officials that Gusinsky would not be extradited based on the information provided and Interpol's determination.<sup>32</sup> The Ministry of Justice also advised Russian authorities that the file on the Russian arrest warrant would be closed.<sup>33</sup> Gusinsky filed a complaint against the Russian Federation in the European Court of Human Rights, which, in 2004, held that the arrest was unlawful and awarded him damages.<sup>34</sup>

---

<sup>30</sup> *Id.* ¶¶ 15-16; *Gusinsky v. Russia*, Application No. 70276/01 (Strasbourg, May 19, 2004), attached as Exh. 11 to Gusinsky Affidavit.

<sup>31</sup> Letter from Ronald K. Noble, Secretary General, Interpol, to Vladimir Gusinsky (July 3, 2001), attached as Exh. 9 to Gusinsky Affidavit.

<sup>32</sup> Letter from Irit Kohn, Director of the Department of International Affairs, State of Israel, Ministry of Justice, to Vladimir Gusinsky (August 24, 2003), attached as Exh. 10 to Gusinsky Affidavit.

<sup>33</sup> *Id.*

<sup>34</sup> *Gusinsky v. Russia*, Application No. 70276/01 (Strasbourg, May 19, 2004), attached as Exh. 11 to Gusinsky Affidavit.

### C. GUSINSKY'S LAWSUIT ON THE NOTE

When Gusinsky commenced this action in February 2008 against Sagi and AGLP, they moved to dismiss for forum non conveniens and failure to state a claim. They also sought a stay pending a related action in Nova Scotia. Gusinsky cross-moved to add AGH as a party defendant. In a Decision and Order filed October 29, 2008, the motion to dismiss was denied and the cross-motion to amend was granted. In defendants' answer to Gusinsky's Third Amended Complaint (the "Complaint"), they admitted "that [Gusinsky] lent US \$2.5 million to [AGH]."<sup>35</sup>

The first cause of action in the Complaint is for the unpaid principal, and the second is for interest, in an unspecified amount. The third cause of action is for the loss of security interest under the Pledge Agreement and the Assurance, and the fourth is for anticipatory breach of contract. In addition to a monetary award, Gusinsky seeks a permanent injunction enforcing the Pledge Agreement and the Assurance.<sup>36</sup>

In January 2009, anticipating a sale of the New Property, Gusinsky moved for a preliminary injunction, and a temporary restraining order was issued enjoining defendants from "dissipating, disposing of, or otherwise transferring the net proceeds after encumbrances and proper closing costs of any sale

---

<sup>35</sup> Answer to Third Amended Complaint, attached as Exh. 2 to Criss Affirmation, ¶ 3.

<sup>36</sup> Complaint, attached as Exh. 1 to Criss Affirmation.

of any assets of [Riverside] or [Riverside GP].”<sup>37</sup> Defendants were directed to “hold specially any such proceeds from such sale pending further court order.”<sup>38</sup> While that motion (003) was pending, Gusinsky’s motion for summary judgment on his first two causes of action was submitted (004). This decision addresses both motions.

## **DISCUSSION**

### **A. NOVA SCOTIA LAW & THE SUMMARY JUDGMENT STANDARD**

Pursuant to the terms of the Note and Pledge Agreement, the substantive law of Nova Scotia, Canada governs. However, New York procedural law, which in this case involves New York’s summary judgment standard, remains applicable.<sup>39</sup> Summary judgment is appropriately granted when a party makes a *prima facie* showing of entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact in opposition.<sup>40</sup>

### **B. MOTION FOR PARTIAL SUMMARY JUDGMENT & OPPOSITION**

Gusinsky contends that the Note, the related agreements, and the undisputed nonpayment establish his claim *prima facie*. As stated above, defendants argue that the Note and

---

<sup>37</sup> Order to Show Cause, dated January 26, 2009.

<sup>38</sup> *Id.*

<sup>39</sup> *Portfolio Recovery Assocs., LLC v. King*, 55 A.D.3d 1074 (3rd Dept. 2008); *Sunbridge Capital Inc. v. G Bon Funding Corp.*, NYLJ, July 3, 2008, at 29, col. 3 (Sup. Ct., Nassau Co.).

<sup>40</sup> *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

the Allonge are unenforceable and the Allonge is not supported by consideration.

In his Affidavit in Opposition, Sagi asserts that the Note was part of a scheme arranged by Arie to influence Prime Minister Ariel Sharon for Gusinsky's benefit.<sup>41</sup> According to Sagi, Gilad Sharon received over one million dollars of the \$2.5 million, disguised as a stock purchase, for lobbying his father. Sagi claims that Arie received the remaining money for facilitating the transaction.<sup>42</sup> He asserts that Arie told him of the scheme after it was effectuated.<sup>43</sup> Sagi also submits a newspaper article describing an unrelated scandal involving Gilad Sharon to show that a bribery occurred.<sup>44</sup>

For the legal significance of these allegations, Sagi submits a memorandum authored by Sheree L. Conlon, a barrister in Nova Scotia, who states that, under the law of Nova Scotia, a contract made in furtherance of an illegal purpose, such as bribery, is unenforceable. She cites cases involving contracts that were entered into in violation of the Canada Temperance Act

---

<sup>41</sup> Affidavit of Sagi Genger, sworn to March 24, 2009 ("Sagi Genger Affidavit"), ¶¶ 12-16.

<sup>42</sup> *Id.* ¶¶ 14-18.

<sup>43</sup> *Id.* ¶ 18.

<sup>44</sup> Ross Dunn, *Sharon Could Face Bribery Charges in Land Deal*, Israel Faxx, January 22, 2004, attached as Exh. C to Sagi Genger Affidavit.

in support of the proposition.<sup>45</sup> Citing a leading treatise on Canadian contract law, Conlon adds that a contract that is illegal in a foreign state would also be unenforceable.<sup>46</sup> From this, she concludes that, if the Note and the Allonge were entered into for an illegal purpose (the bribery of a foreign public official), they would be void and unenforceable under Nova Scotia law.

On the validity of the Allonge, Conlon explains that, under Nova Scotia law, an amendment to a contract must be supported by additional consideration to be valid. She cites cases where courts have found modifications unenforceable because only one party benefitted.<sup>47</sup> Based on Conlon's explanation, defendants argue that the Allonge was not supported by any consideration, making it unenforceable.

#### C. GUSINSKY'S REPLY

In reply, Gusinsky submits a legal memorandum from a Nova Scotia barrister named Alan V. Parish. Parish cites a treatise on contract law, which has been relied upon by Nova Scotia courts, for the proposition that a variation to a contract

---

<sup>45</sup> See *The Queen v. McNutt*, [1900] 4 C.C.C. 392 (C.A.); *Ernest v. Christian*, [1929] 1 D.L.R. 207 (N.S.C.A.).

<sup>46</sup> G.H.L. Fridman, Q.C., *The Law of Contract in Canada*, 5<sup>th</sup> ed., 373-74 (Toronto: Thomson Carswell, 2006).

<sup>47</sup> See *Besta International Corp. v. Watercraft Offshore Canada Ltd.*, 1994 CarswellBC 602 (S.C.); *Nickerson v. McDermaid Agencies Ltd.*, 1992 CarswellNS 279 (T.D.).

yields its own consideration when it is capable of benefitting either party.<sup>48</sup> The same treatise identifies a change in currency as a kind of variation that "might" benefit either party because "there could be no certainty how the two currencies would move in relation to each other."<sup>49</sup> Based on this rationale, Parish takes the position that the Allonge is not unenforceable due to the currency change.

Gusinsky does not refute Conlon's explanation of the law of Nova Scotia on illegal contracts and Parish's affidavit is silent on the issue. Instead, Gusinsky argues that Sagi's allegation of bribery is unsubstantiated and insufficient to bar summary judgment. He points out that the sole basis for the illegality defense is Sagi's own self-serving affidavit. In addition, he contends that defendants are precluded from claiming that his money was not a loan because: (1) their answer admits that the money was "lent by [AGH]"; (2) Sagi acknowledged, in the Assurance, that the money was "borrowed"; and (3) interest payments were made for years without objection. In the end, he says that the bribery allegation is a recent fabrication to feign an issue of fact.

---

<sup>48</sup> G.H. Treitel, *The Law of Contract*, 7<sup>th</sup> ed., 80-81 (London: Stevens & Sons, 1987).

<sup>49</sup> *Id.*

## D. ANALYSIS

### 1. Illegality

The Court credits Conlon's description of the law in Nova Scotia on the subject of illegal contracts. Interestingly, New York law on the subject is similar: "[A] court may refuse to enforce a contract if it is closely connected with an unlawful act."<sup>50</sup> Applying the rule of law described by Conlon, Sagi's conclusory allegation of illegality is insufficient to avoid summary judgment. Gusinky is correct that the bribery claim is flatly contradicted by Sagi's earlier characterization of the transaction as a loan, defendants' judicial admission, and the making of interest payments when AGH was controlled by Sagi. Gusinsky's persecution in Russia, Arie's relationship with Ariel Sharon, and the existence of a scandal involving Gilad Sharon do not defeat Gusinsky's claim against AGH on the Note.

The circumstances surrounding Gusinsky's persecution actually undermine Sagi's allegations. Gusinsky's Israeli citizenship, Interpol's determination, the American outcry over Gusinsky's arrest, and the decision of the European Court of Human Rights all support Gusinsky's assertion that there was no need to bribe Israel for safe passage. Sagi's allegation that Arie orchestrated the bribery scheme through Gilad Sharon's interest is belied by Sagi's execution of the stock purchase

---

<sup>50</sup> *China Trust Bank (U.S.A.) v. Pinter*, No. 04 CV 5331, 2007 WL 922421, at \*5 (E.D.N.Y. Mar. 26, 2007).

agreement for that interest and his valuation of it before the sale. Moreover, Sagi does not submit any financial records for the entities that he now controls to support his claim. While he asserts that Gusinsky's \$2.5 million was used to effectuate a bribe, he does not submit any financial documents to show how the money was used after it was received.

## **2. Consideration**

The Allonge was made almost a year after the Note and before any payments had come due. Not only does it recite that value was exchanged, but Gusinsky describes it as potentially benefitting both parties. Defendants contend that only Gusinsky benefitted from the Allonge, without submitting any evidence on currency conversion rates.

Upon review of the experts' submissions, Parish is more persuasive in describing Nova Scotia law on consideration, and applying it to the facts here. The cases cited by Conlon are distinguishable because, in each of them, only one party benefitted from a variation to the original agreement. In this case, the Allonge did not definitively benefit one party at the expense of the other. The change in currency could have benefitted either party depending on currency fluctuations.

## **3. Preliminary Injunction**

"A preliminary injunction may be granted . . . when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable

injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor."<sup>51</sup> "The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual."<sup>52</sup>

Gusinsky has established a likelihood of success on his cause of action to enforce the terms of the Pledge Agreement and the Assurance. He is a third-party beneficiary of the Assurance because it was intended to benefit him by ensuring that funds received by Properties or Riverside GP would be set aside for the repayment of the Note.<sup>53</sup> He has also demonstrated the prospect of an irreparable injury if the New Property is sold and the net proceeds available for distribution are not applied to the Note. Additionally, the equities weigh in Gusinsky's favor because he is entitled to be repaid and Sagi expressly assured that specific funds would be used for that purpose. Given the facts, the injunction is to be directed to all three defendants.

#### **CONCLUSION**

Gusinsky has established that AGH is liable to him on

---

<sup>51</sup> *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988).

<sup>52</sup> See *Ying Fung Moy v. Hohi Umeki*, 10 A.D.3d 604, 604 (2nd Dept. 2004).

<sup>53</sup> See *Roosevelt Islanders for Responsible Southtown Dev. v. Roosevelt Island Operating Corp.*, 291 A.D.2d 40, 57 (1st Dept. 2001); *Lake Placid Club Attached Lodges v. Elizabethtown Builders, Inc.*, 131 A.D.2d 159, 161 (3rd Dept. 1987).

the Note. He has not established Sagi's individual liability on it, or that AGLP, not the maker, is liable either. Defendants' liability on the remaining claims are not raised in this motion for partial judgment. In addition, Gusinsky is entitled to a preliminary injunction against all defendants pending the resolution of the remainder of the action. The terms of the temporary restraining order are continued pending entry thereof.

Accordingly, it hereby is

**ORDERED** that plaintiff's motion for summary judgment on the first and second causes of action is granted to the extent that he is entitled to judgment against defendant AG Holdings Company in the principal amount of C\$3,845,750, plus interest in an amount to be determined, provided that entry thereof shall abide the determination of the amount of unpaid interest; and it further is

**ORDERED** that plaintiff's motion for a preliminary injunction is granted as against all defendants, and the temporary restraining order is continued pending entry thereof and the fixing of the amount of the undertaking; and it further is

**ORDERED** that the parties shall settle a further order hereon within 10 days of entry hereof, for which purpose courtesy copies hereof are being sent to counsel.

Dated: August *12*, 2009

**ENTER:**



---

J.S.C.  
**JANE S. SOLOMON**  
J.S.C.