

FILE/DIRECTION/ORDER

BEFORE JUDGE MYERS ACTION # CV-20-639806

COVERTHWAITE Plaintiff(s)

-v-

TOTAL CREDIT RECOVERY LIMITED OF GA. Defendant(s)

CASE MANAGEMENT: YES [] NO []

COUNSEL: N.C. MACDONALD Esq. PHONE NO. _____
A. WINTON Esq. PHONE NO. _____
_____ PHONE NO. _____

☒ ORDER [] DIRECTION FOR REGISTRAR

[] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____
[] NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

TD WISHES TO BRING AN URGENT MOTION. AS
DELEGATE OF THE RSI, I MUST DECIDE IF THE
MOTION IS TO BE HEARD UNDER THE NOTICE TO
THE PROFESSION DATED MARCH 15, 2020.

TD SUES FOR WRONGFUL DISMISSAL. SHE WISHES
TO BRING A MOTION FOR AN INTERLOCUTORY
INJUNCTION REQUIRING THE CORPORATE D TO

DATE _____

JUDGE'S SIGNATURE _____

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IMMEDIATELY NOTIFY ITS 400 EMPLOYEES TO SELF-ISOLATE FOR 14 DAYS DUE TO EXPOSURE ~~TO~~ ^{OF} TWO OTHERS EMPLOYEES TO COVID-19. IT SAYS ΔS HAVE VIOLATED THE ORDER OF THE LOCAL OFFICER OF HEALTH UNDER THE HEALTH PROTECTION AND PROMOTION ACT RSO 1990 c. H-7. IT ALSO SEEKS A MANDATORY ORDER REQUIRING THE CORPORATE Δ TO PAY ITS EMPLOYEES DURING SELF-ISOLATION AND TO CARRY ON BUSINESS.

IN ACCORDANCE WITH THE ABOVE-NOTES ORDER, THE EMPLOYMENT STANDARDS AMENDMENT ACT (INFECTIOUS DISEASES EMERGENCIES) ~~SB~~ 2020 SO. 2020 C. 3, AND THE OCCUPATIONAL HEALTH AND SAFETY ACT RSO 1990 c. O. 1. IT ALSO SEEKS AN ORDER REQUIRING THE CORPORATE Δ TO PAY FOR AND UNDERGO PROFESSIONAL CLEANING AND DISINFECTION OF ITS PREMISES. IT ALSO SEEKS AN ORDER REQUIRING THE CORPORATE Δ TO UNDERGO "IMMEDIATE SAFETY INSPECTIONS" FOR

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AT LEAST TWO YEARS. FINALLY, SHE SEES TO BE RELIEVED OF THE OBLIGATION TO PAY DAMAGES TO THE ΔS IF AFTER TRIAL IT TURNS OUT THAT SHE WAS NOT LEGALLY ENTITLED TO THIS INTERIM, MANDATORY RELIEF AND WRONGFULLY CAUSED THE ΔS TO SUFFER LOSS. SHE ASKS FOR THIS FINAL HEAD OF RELIEF BECAUSE, SHE SUBMITS, SHE "IS ACTING IN THE PUBLIC INTEREST," AND IS ACTING IN AN EFFORT TO ~~SHE~~ POTENTIALLY SAVE ^{THE} LIVES OF TCR EMPLOYEES AND THE COMMUNITY AT LARGE."

THE ISSUES OF COMPLIANCE WITH THE COVID-19 EMERGENCY ORDERS, THE EMPLOYMENT LAWS AND THE OCCUPATIONAL HEALTH AND WELFARE LAWS RAISE MATTERS OF VITAL PUBLIC INTEREST. THAT IS WHY ~~THE~~ PUBLIC OFFICIALS SUCH AS THE MINISTER OF HEALTH AND LONG-TERM CARE, THE CHIEF MEDICAL OFFICER

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OF HEALTH THE MINISTRY OF LABOUR AND THE ATTORNEY GENERAL ARE ALL CHARGED WITH ENFORCING THE VARIOUS STATUTORY SCHEMES THAT IT SAYS THE AS ARE VIOLATING.

THE IT HAS FILED EVIDENCE ALTHOUGH THAT THE CORPORATE A HAS BEEN SUBJECT TO SEVERAL COMPLAINTS TO THE MINISTRY OF LABOUR ALL OF WHICH HAVE BEEN DISMISSED. IT SAYS THE AS LIES TO THE MINISTRY. THERE IS NO INDICATION THAT SHE COMPLAINED TO THE CHIEF MEDICAL OFFICER OF HEALTH, OR TO THE OTHER RELEVANT ~~RE~~ MINISTERS OR REGULATORS.

THIS IS A CIVIL LAWSUIT. IT IS NOT AN APPLICATION FOR JUDICIAL REVIEW OF GOVERNMENT ACTION OR INACTION. IT IS NOT OPEN TO A ~~IT~~ IT TO ATTACK AN ORDER OF THE MINISTRY OF LABOUR IN A LAWSUIT AS OPPOSED TO AN APPEAL OR JUDICIAL

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REVIEW OF THE MINISTRY'S DECISIONS.

THE T ARGUES THAT TECHNICALITIES
MUST NOT STAND IN THE WAY OF SAVING
LIVES. THE LAW IS NOT A TECHNICALITY. A
TRIAL FOR DAMAGES IS NOT THE AGENCY
GENERAL ~~PROH~~ WHO ACTS TO PROTECT THE
PUBLIC. IF THE COURT IGNORES THE LAW,
IN TIMES OF EMERGENCY ESPECIALLY INJUSTICE
RESULTS.

A PRIVATE T WHO SEEKS AN INJUNCTION
BEFORE HER ALLEGATIONS ARE PROVED AT TRIAL
MAY TO SHOW THAT SHE WILL BE HARMED IN A
WAY THAT CANNOT WAIT FOR A DAMAGES AWARD AT
TRIAL. T IS NOT WORKING AT D'S PREMISES
CURRENTLY. SHE SUFFERS NO CIVIL HARM
IF THE ORDER SOUGHT IS NOT MADE NOW.

MS MCDONALD ARGUES THAT ONLY THE
COURT CAN PREVENT DEATHS FROM D'S

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ALLEGED MISCONDUCT. THIS IS NOT CORRECT. EACH STATUTE ~~AND~~ WHICH IT CLAIMS IS BEING RESEARCHED CONTAINS ENFORCEMENT MECHANISMS. ~~IT~~ IT IS COMPLETELY OPEN TO THE AND THE EMPLOYEES WILLING TO COME FORWARD TO PROVIDE THEIR EVIDENCE TO THE PEOPLE WITH LEGAL AUTHORITY TO ENFORCE THE RELEVANT STATUTES. DESPITE MY REPEATED EFFORTS, MS M^{RS} DONARD WAS NOT ABLE TO POINT TO ANY LEGAL BASIS UPON WHICH THIS COURT ~~DO~~ COULD BE ENTITLED TO GRANT THE RELIEF SHE SEEKS. EXERCISE OF GOVERNMENT AUTHORITY WITHOUT A LAWFUL BASIS IS ARBITRARY AND CONTRARY TO THE RULE OF LAW.

THE COURT DOES HAVE THE INHERENT JURISDICTION TO REMEDY ALL LEGAL WRONGS AS A SUPERIOR COURT OF GENERAL JURISDICTION UNDER S. 96 OF THE CONSTITUTION ACT 1867. BUT THE COURT'S INHERENT JURISDICTION DOES NOT

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APPLY WHEN A STATUTE PROVIDES A DIFFERENT
DECISION-MAKER OR LEGAL MECHANISM.

I DO NOT FOR ONE SECOND
DOUBT THE IMPORTANCE OF THE ISSUES IF
TJ'S ALLEGATIONS ARE TRUE. HOWEVER, A CIVIL
CONVULS AND AN INTERLOCUTORY ~~IN~~ INJUNCTION
MOTION DOES NOT GRANT A TJ THE MANTLE
OF A MINISTER OF THE CROWN. DESPITE WHAT
MIGHT BE WORSE INTENTIONS, TJ IS SUING FOR
MONEY FOR HERSELF. THAT IS WHAT A CIVIL
CONVULS BETWEEN PRIVATE PARTIES IS ABOUT. TJ
AND HER COLLEAGUES HAVE PUBLIC FORA AVAILABLE
TO THEM TO ADVANCE THE PUBLIC INTEREST.
THE PROPOSED MOTION IS NOT BASED ON
ANY APPLICABLE LEGAL RIGHT OR THEORY AND
CANNOT POSSIBLY SUCCEED. THEREFORE, IT IS NOT
URGENT OR APPROPRIATE TO SCHEDULE IT FOR
HEARING. THE MOTION IS STRUCK OUT WITHOUT
COSTS.

DATE: Apr 23/20


JUDGE'S SIGNATURE

Andrew Winton

From: Myers, Mr. Justice Fred (SCJ) <Fred.Myers@scj-csj.ca>
Sent: April-24-20 3:10 PM
To: Andrew Winton; Natalie C. MacDonald
Cc: Kathryn Marshall; Mackenzie Irwin; Niklas Holmberg
Subject: Re: SCJ- Civil - Couperthwaite v Total Credit Recovery Limited et al - CV-20-00639806-0000 [IWOV-Client.FID104030]

Couperthwaite v Total Credit Recovery Limited et al - CV-20-00639806-0000

Supplementary Endorsement.

April 24, 2020.

I have received the submissions below after the release of my decision striking the plaintiff's motion record. I invited Mr. Winton to send me the letter from Ms. MacDonald had omitted from the plaintiff's motion record which he did in the first email below. All of the emails that followed were not invited. The full chain of emails below with their original enclosures (that I have omitted from this email) is incorporated into this endorsement.

Counsel for the plaintiff refers me to the decision of Morgan J. in *ONA v Eatonville*, 2020 ONSC 2467 that was released shortly before the release of my decision. She invites me to stay my decision to allow her further time to file a factum on whether there is a cause of action for the motion that the plaintiff sought to bring. In my endorsement convening the case conference to consider the request to bring the motion, I provided notice to the plaintiff that she should be prepared to respond to the issues raised by Mr. Winton in his letter dated April 23, 2020 that included the bulk of the matters relied upon in my decision.

I did not invite further submissions on the merits and see no grounds to re-open the matter under Rule 59.06. Although the parties did not know about Justice Morgan's case, the issues of the plaintiff's standing and cause of action were before me. Ms. MacDonald was clear in arguing the plaintiff's submission that she has the legal right to enforce the various statutes and statutory orders on which she relied because people might die if the employer does not comply with those public health laws. I disagree for the reasons set out in my earlier endorsement. Ms. MacDonald provided no legal basis to support the plaintiff's right to enforce statutes that say they are enforceable by named government officials in comprehensive regulatory and court processes. In addition:

1. I am the judge who assigned the *ONA* case to Morgan J. I was aware of it.
2. The nurses' union is the statutory exclusive bargaining agent for its members. It has the statutory right to make and enforce collective agreements that bind the employer and all of the employees in the bargaining unit. Morgan J. recites the fact that the collective agreements before him included terms requiring the employer to comply with health laws that affect union members going forward. The union commenced grievance arbitrations and arbitration under the *Occupational Health and Safety Act* to enforce its members' rights under their collective agreements and the applicable statutory scheme. Morgan J. held the union had the right to seek interim relief pending the delay in hearing the arbitration and statutory proceedings;

3. The plaintiff, by contrast, is seeking to enforce statutory prohibitions against her former employer in a wrongful dismissal action. She has no standing to enforce those statutes. Rather than proceeding under applicable statutory processes like the ONA, the plaintiff seeks to collaterally attack the regulatory decisions that have been made;
4. Counsel's suggestion, in an email of last evening, that her client's motion was somehow independent of her wrongful dismissal action is disingenuous at best. It ignores the wording of the motion itself, that there is no other proceeding commenced or threatened, and the fact that her "fourth" letter (that counsel concedes was written to advance the wrongful dismissal claim) contains the very same allegations as were made on the motion;
5. Contacting a judge in breach of Rule 1.09 remains inappropriate;
6. The ONA case highlights the fact that the plaintiff has no standing and no cause of action for the mandatory interlocutory injunctive relief that she sought to schedule.

I am no longer to be contacted by counsel in this matter.

F.L. Myers J.

Mr. Justice Fred Myers
361 University Avenue
Toronto, ON
M5G 1T3

416-327-5284(O)
416-327-5417 (Fax)

From: Andrew Winton
Sent: April 24, 2020 2:07 PM
To: Natalie C. MacDonald
Cc: Myers, Mr. Justice Fred (SCJ) ; Kathryn Marshall ; Mackenzie Irwin ; nholmberg@lolg.ca
Subject: Re: SCJ- Civil - Couperthwaite v Total Credit Recovery Limited et al - CV-20-00639806-0000 [IWOV-Client.FID104030]
Your Honour,

I apologize for having to write to you like this, but I feel compelled to inform you that my friend sent her email below without prior notice to counsel for the Defendants and certainly without our consent.

Thank you,

Andrew Winton
Lax O'Sullivan Lissus Gottlieb LLP
D: 416 644 5342 | M: 647 286 9001
awinton@lolg.ca

On Apr 24, 2020, at 1:59 PM, Natalie C. MacDonald wrote:

Good afternoon Your Honour:

There was an important decision released yesterday, which I have attached to this email, which is on point to the matter at hand, and we are wondering if you would respectfully consider staying your endorsement, and permit the parties a brief period of time to submit factums as to whether there is a cause of action for this injunction.

Respectfully submitted,

Natalie

Natalie C. MacDonald

Owner and Founder

EMAIL: nmacdonald@macdonaldassociates.ca

SENIOR EXECUTIVE LEGAL ASSISTANT: Jenny M. Trotman | jtrotman@macdonaldassociates.ca

2 Bloor Street West, Suite 1005 | Toronto, Ontario M4W 3E2 | TEL: 416.601.2300 Ext. #101 | FAX: 416.601.2288

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From: Natalie C. MacDonald

Sent: April 23, 2020 6:32 PM

To: 'Andrew Winton' ; 'Fred.Myers@scj-csj.ca'

Cc: Kathryn Marshall ; Mackenzie Irwin ; Niklas Holmberg

Subject: RE: SCJ- Civil - Couperthwaite v Total Credit Recovery Limited et al - CV-20-00639806-0000 [IWOV-Client.FID104030]

Your Honour:

This is my letter, which had to do with the wrongful dismissal action, an action completely separate from this emergency injunction, which is why it was not in the materials, but which I stand by.

Thank you,

Natalie

Natalie C. MacDonald

Owner and Founder

EMAIL: nmacdonald@macdonaldassociates.ca

SENIOR EXECUTIVE LEGAL ASSISTANT: Jenny M. Trotman | jtrotman@macdonaldassociates.ca

2 Bloor Street West, Suite 1005 | Toronto, Ontario M4W 3E2 | TEL: 416.601.2300 Ext. #101 | FAX: 416.601.2288

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From: Andrew Winton <awinton@lolg.ca>

Sent: April 23, 2020 5:11 PM

To: 'Fred.Myers@scj-csj.ca' <Fred.Myers@scj-csj.ca>

Cc: Kathryn Marshall <kmarshall@macdonaldassociates.ca>; Mackenzie Irwin <mirwin@macdonaldassociates.ca>;

Andrew Winton <awinton@lolg.ca>; Niklas Holmberg <nholmberg@lolg.ca>; Natalie C. MacDonald

<nmacdonald@macdonaldassociates.ca>

Subject: SCJ- Civil - Couperthwaite v Total Credit Recovery Limited et al - CV-20-00639806-0000 [IWOV-Client.FID104030]

Your Honour,

As requested, I attach a copy of my friend's April 9, 2020 letter to Total Credit Recovery.

Thank you,

Andrew Winton

Direct 416 644 5342

Cell 647 286 9001

awinton@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP

Suite 2750, 145 King St W

Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730

www.lolg.ca

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