

UNOFFICIAL TRANSLATION

SUPERIOR COURT (Commercial Division)
CANADA – PROVINCE OF QUEBEC – DISTRICT OF LAVAL
No.: 540-11-012245-249
DATE: September 12, 2024
PRESIDED BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

THE AUTORITÉ DES MARCHÉS FINANCIERS (AMF)

Plaintiff

v.

VALEURS MOBILIÈRES WHITEHAVEN INC.

and

GESTION D'ACTIFS WHITEHAVEN INC.

and

PLACEMENTS WHITEHAVEN INC.

and

WHITEHAVEN CAPITAL DE RISQUE INC.

and

WHITEHAVEN CAPITAL INC.

and

PHARMA SOLSTAR INC.

and

CAPITAL SOLSTAR INC.

and

FONDS SOLSTAR CAPITAL

and

FONDS MVMT CAPITAL

and

SOCIÉTÉ EN COMMANDITE MVMT CAPITAL

and

FIDUCIE D'EXPLOITATION MVMT CAPITAL

and

COMMANDITÉ MVMT INC.

and

SOCIÉTÉ EN COMMANDITE MVMT CAPITAL 1

Defendants

FTI CONSULTING CANADA INC.

Mis-en-cause

JUDGMENT

Provisional Administration (SFSA, s. 19.1)

[1] Valeurs mobilières Whitehaven Inc. (VMWH) holds registrations as a mutual fund dealer and as an exempt market dealer. The exempt market dealer may sell securities of issuers without a prospectus, a market that inherently involves significant risks for investors.

[2] Gestion d'actifs Whitehaven Inc. (GAWH) holds a portfolio manager registration.

[3] VMWH and GAWH are owned by Placements Whitehaven Inc. (PWH). Anathanasios Baltzis (Tommy) is its director and president. He is the individual designated as responsible for compliance for both entities under Regulation 31-103.

[4] Representatives of GAWH manage nearly \$250 million in assets, of which approximately \$54 million are placed in the exempt market. As GAWH admits, "of that CAD54M, CAD35M is invested in products for which the firm has a conflict of interest." GAWH therefore operates within a highly conflictual environment.

[5] Among the exempt market issuers to which VMWH and GAWH encourage their clients to allocate capital are the following:

5.1. The Solstar Group: the issuers Solstar Capital Inc. and Fonds Solstar Capital Inc. have raised nearly \$4 million through debentures and share subscription. These amounts were then advanced to the operational entity, Pharma Solstar Inc. (Pharma), in exchange for Class B shares.

5.2. The MVMT Group: In July 2018, the MVMT Capital Fund Trust (Fonds MVMT) was constituted. This issuer grants private loans to borrowers with limited access to credit. Practically, however, the fund subscribes to units of MVMT Operating Trust, which in turn acquires units of MVMT Limited Partnership and MVMT Capital 1 Limited Partnership. These entities use the funds to issue private loans to eligible borrowers.

[6] VMWH and GAWH acknowledge the existence of conflicts of interest between themselves, other Whitehaven-related entities, the Solstar Group, and the MVMT Group. Several individuals hold roles across multiple entities; some hold shares in others; and substantial sums circulate between entities as fees or payments.

[7] Through its inspections, discussions with VMWH and GAWH representatives, and its preliminary inquiry and investigation, the AMF identified numerous highly concerning elements requiring protective measures for the public and, more specifically, for investors. Among the AMF's observations were:

7.1. Significant deficiencies in governance and regulatory compliance under Regulation 31-103 and breaches of Regulation 45-106.

7.2. A drop in asset values while unrealistic valuations were still being provided to investors.

7.3. Despite cease-trade orders regarding Pharma financing, transactions continued within Fonds Solstar, and clients were encouraged to invest directly in Pharma via promissory

notes.

7.4. Funds raised for the Solstar Group were used to pay administrative expenses in proportions far exceeding what was disclosed, to the detriment of research and development.

7.5. The MVMT Group's business model appears unsustainable and harmful to new investors, particularly given the poor-quality loan portfolio. Distributions were made despite insufficient cash flow, creating a false sense of security.

[8] The Act respecting the regulation of financial services (LESF) allows for the appointment of a provisional administrator when the conditions outlined in section 19.1 are met.

[9] The AMF exercises the functions and powers conferred by the LESF. It may file an application before the Superior Court seeking the appointment of a provisional administrator pursuant to section 19.1.

[10] In this case, the AMF is of the view that such an appointment is necessary and therefore presents an ex parte Application for the appointment of a provisional administrator (the "Application"). It seeks to have FTI Consulting Canada Inc. act as the provisional administrator.

[11] Prior to the hearing, based on the allegations in the AMF's Application, which indicated urgency and the need to avoid irreparable harm to numerous investors at risk of losing their investments or investing in questionable products, the Court authorized the matter to proceed ex parte and in camera, and ordered confidentiality until service on the defendants, as permitted by section 19.6 LESF.

[12] For the reasons outlined below, the Court finds that the AMF has satisfied its burden and that a provisional administrator must be appointed.

LEGAL FRAMEWORK

[13] Section 19.1 LESF aims, among other things, to protect investors and savers. Accordingly, it imposes only a limited burden on the AMF: it must demonstrate reasonable grounds to believe that one of the circumstances described in section 19.1 has occurred.

[14] In determining the Application, the Court does not need to conclude, on a balance of probabilities or beyond a reasonable doubt, that assets have disappeared, that fraudulent acts were committed, that there were breaches of law, or that there was improper administration.

[15] The decision rendered in this matter is not subject to appeal. However, the defendants have ten days from the issuance of the order to file a notice of contestation.

[16] As noted in *Finance Silvermont*, any such contestation is not an opportunity to relitigate the appropriateness of the initial order. The Court will limit its review to whether the AMF failed in its “super-added duty to the Court” to present the evidence fairly and fully.

[17] Based on the hearing and the explanations provided, the Court is satisfied, until proven otherwise, that these obligations have been met.

[18] The Court notes, and the AMF agrees in principle, that in addition to contesting the order itself, interested parties — including defendants — may seek directions to request modifications to the present order so as to properly frame the provisional administrator’s interventions.

[19] The Court now turns to the main reasons for issuing the orders set out in this judgment. It will first address: (1) the Pharma Solstar group, and then (2) the MVMT group. The role played by VMWH and GAWH will be discussed in both contexts.

1. Pharma Solstar

[20] As noted, Solstar Capital and Fonds Solstar raised funds that they then advanced to Pharma in exchange for shares.

[21] In the July 2017 and June 2018 offering memoranda, Pharma Solstar is described as operating in the pharmaceutical field. It is presented as a new specialized pharmaceutical company created to produce and commercialize the B-Organic formulation, a novel delivery matrix aimed at improving the bioavailability of drugs and natural product derivatives used or being developed to treat *H. pylori* infections, associated MALT lymphoma, and leishmaniasis. The formulation belongs to B-Organic Films Corp. and is licensed exclusively to Pharma Solstar for these purposes.

[22] Dionissios (Dennis) Baltzis, Tommy’s brother, is Pharma’s president and director.

[23] Beginning in 2020, Pharma sought to develop new pharmaceutical products using RNA interference technology for the treatment of certain cancers and infectious diseases. It entered into exclusive licensing and joint research agreements with third parties to enable the use of its RNAi technology.

[24] Initially, Solstar Capital raised funds through the issuance of debentures to investors. Dennis is also president and director of Solstar Capital.

[25] Two offering memoranda were distributed in 2017 and 2018. They provided that the minimum subscription was \$5,000, that the debentures matured five years after issuance, and that they bore interest at 10.5% annually.

[26] VMWH holds 5% of Pharma's shares and acts as placement agent, receiving compensation of up to 10% of gross proceeds.

[27] Investors contributed \$1,173,000 under the first offering, and nearly \$4 million in total under both offerings.

[28] In 2019, Solstar decided—apparently with the participation or agreement of VMWH and GAWH—that investors would no longer invest in Pharma through debentures issued by Solstar Capital, but rather through a new issuer, Fonds Solstar. Dennis remained president and director of Pharma and became trustee of Fonds Solstar.

[29] Max Arella appears for the first time as Pharma's scientific director in the November 22, 2019 Fonds Solstar offering memorandum. It states that no member of Solstar's senior management, including Arella, had been sanctioned under securities laws. This statement is false: Arella had been sanctioned by the U.S. District Court for the District of Massachusetts following SEC proceedings, prohibiting him from acting as an officer or director of certain issuers and requiring payment of a \$50,000 penalty.

[30] In a letter inappropriately sent by Dennis on Solstar Capital letterhead but referencing Solstar Pharma, investors were advised that Fonds Solstar had been constituted. Debentures could be exchanged for units, converting creditors into unitholders. Dennis promoted this as advantageous due to potential value growth. However, becoming a unitholder rather than a creditor may be disadvantageous. Neither Solstar Fonds nor VMWH or GAWH disclosed or analyzed these risks. Ultimately, nearly 90% of debenture holders exchanged their debentures for units.

[31] After the exchange, Fonds Solstar continued to solicit subscriptions. Three offering memoranda were issued in 2019, 2020, and 2022.

[32] These memoranda disclosed that PWH held 5% of Fonds Solstar units. Pharma would pay VMWH up to 10% of gross proceeds. In 2020, Whitehaven Capital de risque (WHCR), whose main shareholder is PWH and whose president is Tommy, received \$150,000 for "corporate finance advisory services." WHCR's explanations to the AMF regarding these services were vague and unconvincing.

[33] The AMF raises numerous concerns about Pharma, Solstar Capital, Fonds Solstar, and the actions or omissions of VMWH and GAWH.

[34] The debenture-for-unit exchange should have been preceded by a valuation process. The AMF considers the exchange to constitute an issuer bid, requiring a formal independent valuation under Regulation 61-101. No such process occurred.

[35] More broadly, the AMF alleges that Solstar Capital and Fonds Solstar overvalued Pharma in 2019, 2020, and 2021, thereby overstating the value of debentures and units and providing false information to investors.

[36] The Court highlights the following:

36.1 Pharma's book value as of December 31, 2021 was approximately \$340,000, yet Fonds Solstar—whose only asset was Class B shares of Pharma—reported its value as \$64 million. This discrepancy is inexplicable.

36.2 Fonds Solstar delayed issuing its December 31, 2022 financial statements in violation of Regulation 45-106, leading to a cease-trade order (CTO) on July 6, 2023. When eventually released in February 2024, these statements showed Pharma's value had collapsed from \$64.8 million to \$2.1 million, with nearly 570,000 units outstanding. Unit values should have fallen proportionately. Yet, as of June 30, 2024, VMWH account statements still listed unit values at \$113.59.

[37] There are therefore reasonable grounds to believe that investors received unrealistic and misleading valuations.

[38] Despite the CTO, four transactions transferring or purchasing units occurred between September and December 2023. Additionally, to circumvent the CTO, Pharma raised \$290,000 through 21 unsecured convertible promissory notes.

[39] The AMF further alleges misuse of funds. Offering memoranda stated that only 20% of proceeds would cover administrative expenses, with 80% dedicated to research and development. The AMF's expert analysis found the following:

39.1 For one offering of \$427,804.40, 32.5% went to administrative expenses.

39.2 For an offering of \$3,464,904.40, 43% went to administrative expenses.

39.3 For an offering of \$2,595,982.94, 63% went to administrative expenses.

[40] The false and misleading valuation of units, the extremely reduced—if not nonexistent—value of Pharma, the absence of a valuation at the time of the debenture redemption, the false statement concerning Arella, the transactions circumventing the CTO, and the improper use of funds all constitute reasonable grounds for imposing a provisional administration.

[41] The Court considers these issues to be symptoms of the conflicts of interest permeating the relationships among VMWH/GAWH, PWH, WHCR, Solstar Capital, Fonds Solstar, and Pharma.

[42] Section 13.4 of Regulation 31-103 requires registrants such as VMWH and GAWH to address conflicts "in the best interest of the client." At minimum, they must not only disclose the conflict but provide investors with a description of its potential impact, the risks it poses, and how the conflict has been or will be managed. The documents provided by

GAWH and VMWH do not demonstrate such an approach.

[43] More broadly, conflicts of interest arising from investments in related entities were not managed in a manner consistent with the client's best interests.

[44] The issuers, VMWH, and GAWH failed to ensure that funds were used in accordance with the purposes stated in offering memoranda. False information was provided both in disclosure documents (Arella) and in account statements. Despite AMF cease-trade orders, these orders were either violated or circumvented through promissory notes.

[45] These facts lead the Court to conclude that the AMF has established reasonable grounds to believe that investors in Solstar Capital and Fonds Solstar face risks and that the conditions of subsections 19.1 (1°) to (4°) are met.

2. The MVMT Group

[46] As noted, Fonds MVMT is a trust granting private loans to borrowers with limited access to credit.

[47] Since July 2018, Fonds MVMT has issued several offering memoranda. The most recent, dated May 28, 2024, indicates that VMWH acts as placement agent and receives compensation of up to 10%.

[48] Initially, Fonds MVMT had three trustees. Since 2023, it has had only one: Élizabéth Fortin.

[49] Offering memoranda indicate that Fonds MVMT indirectly carries on lending activities by subscribing to units of the MVMT Operating Trust, which in turn is the limited partner of SEC MVMT and SEC MVMT 1.

[50] Using the subscription proceeds of Fonds MVMT, the Operating Trust subscribes to units of SEC MVMT and SEC MVMT 1, which use the capital to issue loans. Commandité MVMT Inc. is the general partner of both SEC MVMT and SEC MVMT 1. As of December 31, 2023, 75 loans totaling nearly \$30 million had been issued.

[51] Unit holders are entitled to monthly or quarterly distributions of "available cash," capped at 10%.

[52] Available cash ultimately comes from distributions by SEC MVMT and SEC MVMT 1, minus amounts distributed to their unitholders and certain expenses.

[53] Fonds MVMT and the general partner of SEC MVMT and SEC MVMT 1 are managed by Whitehaven Capital Inc. (WHC), which earns management fees. Fortin is a director of WHC.

WHC's shareholders are PWH and Hyperia Capital, the latter owned by Fortin through Vega Solutions Inc.

[54] These links between PWH, WHC, and Fortin underscore the pervasive conflicts of interest within the MVMT Group.

[55] In July 2024, after reviewing the May 28, 2024 offering memorandum and the consolidated financial statements as of December 31, 2023, the AMF became seriously concerned.

[56] Fonds MVMT agreed not to proceed with new investments under the memorandum until the AMF received satisfactory answers to its questions. The AMF received some information but remained unsatisfied, believing there were reasonable grounds to conclude that regulatory requirements were not being met, that significant management deficiencies existed, and that assets may be insufficient to meet obligations.

[57] These concerns fall into four categories.

[58] First, operating cash flows are insufficient to cover distributions. An analysis of the consolidated financial statements for 2023 (Fonds MVMT, the Operating Trust, SEC MVMT, and SEC MVMT 1) shows that distributions exceeded operational cash flows by more than \$1 million. This is troubling given the high-risk nature of the borrowers and the fact that, in 2023, mortgage repayments amounted to only 43% of the amounts scheduled, with 31% of interest receivables unpaid.

[59] Second, new capital is being used to fund distributions rather than new loans. In 2023, 35% of new capital raised was used to pay distributions, leaving only 63% for lending.

[60] Third, distributions are being made even though Fonds MVMT's operations were unprofitable in 2023. Investors receiving these distributions may incorrectly believe they reflect positive returns and that their capital remains intact. This false sense of security is reinforced by the fact that redemption requests are being honoured. This strategy disproportionately benefits longer-standing investors, who continue to receive 10% returns, though such returns may be unrealistic for new investors—who also face the risk of losing capital.

[61] Fourth, the business model is unlikely to sustain the \$10 per unit redemption value in the long term. Management fees significantly reduce available cash. The AMF fears that, even in a best-case scenario with a 15% return, the fund will be unable to maintain a unit value above \$9.

[62] Although the risks are less severe than those affecting Solstar investors, the AMF has nonetheless met its burden of showing that Fonds MVMT's assets may be insufficient or

misused, and that a provisional administrator is necessary to protect the public.

[63] The Court concludes that the AMF has demonstrated reasonable grounds to believe that the circumstances in subsections (1°) and (4°) of section 19.1 are present and justify the appointment of a provisional administrator.

[64] Despite the significant shortcomings of VMWH and GAWH in carrying out their activities relating to the exempt market, the Court recognizes that these activities represent only a fraction of their operations. Moreover, nothing suggests that the management of MVMT Group loans, in itself, is deficient.

[65] It must also be acknowledged that although the AMF seeks to protect investors, the fees of the provisional administrator and its counsel will be charged “against the assets of the Defendants,” subject to the Court’s approval. As a result, investors—who have already suffered substantial losses—will also bear part of the costs of the provisional administration.

[66] The Court emphasizes that full cooperation from the representatives of the entities concerned is desirable. A measured and targeted approach is necessary. Only the issues raised in this proceeding should be addressed. There is a real risk that attempting to intervene too broadly could undermine the efficiency of the process. For this reason, the Court orders the provisional administrator to file a status report within thirty (30) days of its appointment, detailing the tasks performed and providing a summary of fees incurred.

ORDERS OF THE COURT

[1] GRANTS the Application of the Autorité des marchés financiers (“AMF”) seeking the appointment of a provisional administrator for the Defendants.

ACCELERATED PROCEEDINGS

[2] ABRIDGES all delays relating to the presentation of the Application.

CONFIDENTIALITY

[3] HOLDS the hearing in the absence of the Defendants.

[4] REMINDS the Defendants that they have ten (10) days from the issuance of the order granting the Application to file a notice of contestation with the Superior Court.

[5] ORDERS that the names of the Defendants shall not appear on the court docket nor on the hearing roll for this matter, and that the judgment granting the Application shall remain

sealed until served upon the Defendants, in accordance with section 19.6 LESF.

[6] ORDERS that any person who becomes aware of the Application or of the order granting it must maintain absolute confidentiality until the documents are served on the Defendants.

APPOINTMENT OF THE PROVISIONAL ADMINISTRATOR

[7] APPOINTS FTI Consulting Inc. (the "Provisional Administrator") to act as provisional administrator of the Defendants.

POWERS OF THE PROVISIONAL ADMINISTRATOR

[8] AUTHORIZES the Provisional Administrator, or any person designated to assist it, without being required to do so, to exercise the following powers in place of the Defendants and their directors, officers, mandataries, and shareholders, namely:

Powers relating to taking possession:

(a) Enter at any time the business premises of the Defendants, even outside normal business hours, as well as any place where the Defendants' property is located, and require that directors, trustees, officers, employees, mandataries, and any property owner provide keys, cards, or access codes allowing entry at any time.

(b) For Pharma Solstar Inc., Capital Solstar Inc., and Fonds Solstar Capital, enter at any time the residences of their directors, trustees, officers, employees, or mandataries, even outside normal business hours, as well as any place where their property is located, and require that access be provided.

(c) Retain a locksmith, bailiff, or police authorities to ensure access.

(d) Take possession of all property of the Defendants, wherever located, including in the hands of third parties, and specifically:

(i) Take any measures necessary to safeguard the property.

(ii) Take control of all bank accounts, brokerage accounts, investments, or other financial assets held at any financial institution.

(iii) Take possession of originals or copies of all corporate, financial, operational, contractual, legal, or other documents, including cloud accounts, hardware, storage devices, and website-hosting information.

Powers relating to operations:

(e) Continue or suspend, in whole or in part, the business of the Defendants, provided such continuation is lawful.

- (f) Terminate or rescind any contract entered into by the Defendants.
- (g) Communicate with creditors and debtors.
- (h) Initiate or continue legal proceedings related to the Defendants' business.
- (i) Control receipts and disbursements, including authorizing or refusing payments.
- (j) Collect accounts receivable and negotiate related agreements.
- (k) Open bank accounts as necessary.
- (l) Issue written notice to investors informing them of the provisional administration and its powers.
- (m) Suspend new exempt market product sales until proper valuations and conflict management measures are verified.
- (n) Suspend redemptions of MVMT Capital Fund units until deemed appropriate.

Powers relating to investigations:

- (o) Investigate the operations and financial situation of the Defendants and any related entity, including:
 - (i) Exercise powers under the Act respecting public inquiry commissions.
 - (ii) Question any person with relevant information.
 - (iii) Order production of documents or things relevant to the investigation.

General powers:

- (p) Retain accountants, lawyers, or other professionals as needed.

DUTIES OF THE DEFENDANTS

[9] ORDERS all directors, trustees, officers, employees, mandataries, and any professional engaged by the Defendants to fully cooperate with the Provisional Administrator.

[10] ORDERS full access to all information, including digital access codes, website administration, and cloud-based systems.

[11] ORDERS that no documents or information be destroyed or moved without prior authorization.

[12] ORDERS that all persons immediately cease exercising powers relating to the affairs of the Defendants unless requested by the Provisional Administrator.

EMPLOYEES

[13] AUTHORIZES the Provisional Administrator to retain the services of employees until termination by the Provisional Administrator or the Defendants. The Provisional Administrator bears no liability as employer or successor employer.

LIMITATION OF LIABILITY

[14] DECLARES that the Provisional Administrator exercises its powers at its sole discretion.

[15] DECLARES that the Provisional Administrator and its delegates cannot be sued for acts performed in good faith.

[16] DECLARES immunity for temporary suspension of the Defendants' business.

[17] DECLARES that the Provisional Administrator holds the powers and immunity of a commissioner under the Act respecting public inquiry commissions.

FEES

[18] AUTHORIZES the Provisional Administrator to draw its fees and disbursements from the Defendants' assets, subject to Court approval.

REPORTING

[19] ORDERS the Provisional Administrator to provide an initial report to the AMF within sixty (60) days and thereafter as required, and to file these reports with the Court.

GENERAL PROVISIONS

[20] DECLARES that service of documents may be made electronically.

[21] DECLARES that parties may serve documents electronically, provided paper copies are delivered upon request.

[22] AUTHORIZES the AMF and the Provisional Administrator to apply at any time for modifications or directions from the Court.

[23] DECLARES that the order is final and not subject to appeal.

[24] ORDERS provisional execution notwithstanding appeal.

[25] AUTHORIZES service at any time, including outside legal hours and on non-judicial days.

[26] AUTHORIZES service by email and text message to Elizabeth Fortin regarding all MVMT entities.

[27] WITHOUT COSTS.

Signed:
CHRISTIAN IMMER, J.C.S.

Hearing dates: September 10 and 11, 2024.