

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Choice Properties Limited Partnership
Plaintiff(s)

AND

Penady (Barrie) Ltd et al
Defendant(s)

Case Management Yes No by Judge: McBrien

Counsel	Telephone No:	Facsimile No:
(see attached)		

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

This matter appeared before me again on June 1/20 on very short notice to, once again, deal with the issue of pre-hearing discovery. Once again it proceeded by way of Zoom videoconference in accordance with the Notices to the Profession and the Commercial List advisory material were provided to me via email. A

4 June 20

Date

McBrien

Judge's Signature

Additional Pages 3

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Copy of this endorsement will be provided to the parties by email via the Commercial List office.

On May 25/20 I refused to allow the Rule 39.03 examination of Mr Cam Lewis for the reasons given in that endorsement

On June 1/20, the day before the motion I heard another request from the Respondents for discovery - this time to compel the Receiver to answer written questions - many of which were directed to Mr. Lewis. The request was made on the evening of May 27/20

I refused to grant the request. First, granting the request at this time, would almost certainly have lead to an adjournment of the motion that had already been

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

adjourned on a prior occasion.

There was ample opportunity to deal with this before May 27 June 1/20. The Respondents conceded it could have been dealt with earlier.

Further, it is largely an attempt to obtain information from Mr Lewis, whose examination I previously denied.

At that time however, I advised Receiver's counsel that if at the hearing I was of the view that some of the questions posed ought to have been answered I may draw an adverse inference.

In closing, I pause to note, that there was an error in my my 25/20 endorsement at Footnote #1. Where I refer to the "Receiver" I ought to have said "Choice". Nothing turns on this in my view but I ought

Court File Number: _____

**Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

to correct the error

meant

McEwen, Mr. Justice Thomas John (SCJ)

From: Eric Golden <egolden@blaney.com>
Sent: June 1, 2020 8:42 AM
To: Anissimova, Alsou (MAG); McEwen, Mr. Justice Thomas John (SCJ)
Cc: Tim Duncan; 'Irving, Shawn'; 'De Lellis, Michael'; 'Tannenbaum, Bryan'; 'Weisz, Daniel'; Chad Kopach; mcitak@grllp.com
Subject: Choice v. Penady et al Court File No. CV-20-00637682-00CL - Chambers June 1 and SISP Motion June 2
Attachments: Endorsement of McEwen J May 25 2020 highlighted.pdf

Good morning Your Honour,

I am counsel for the Receiver RSM on the Chambers attendance at 9 a.m. this morning

I have set out below the anticipated counsel sheet, and have attached a highlighted version of your most recent Endorsement

Counsel on the Chambers attendance this morning will be:

Eric Golden for the Receiver RSM Canada Limited
Michael De Lellis and Shawn Irving for the Applicant Choice Properties
Michael Citak and Tim Duncan for the Respondents

In addition, the Bryan Tannenbaum of RSM will attend.

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
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COUNSEL FOR OTHER PARTY		COUNSEL FOR OTHER PARTY	
Party	Respondents/Mady (Barrie) Inc.		
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