

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

**MARCUS WIDE of Grant Thornton (British Virgin Islands) Limited, and HUGH
DICKSON, of Grant Thornton Specialist Services (Cayman) Ltd, acting together herein in
their capacities as joint liquidators of Stanford International Bank Limited**

Plaintiffs

- and -

THE TORONTO-DOMINION BANK

Defendant

**THIRD AFFIDAVIT OF PETER R. WILTSHIRE
(Sworn March 26, 2015)**

I, **PETER R. WILTSHIRE**, of the City of London, in the United Kingdom, MAKE
OATH AND SAY:

1. As detailed in my first affidavit sworn November 28, 2014 (my “**First Affidavit**”), I was counsel to the former joint liquidators of Stanford International Bank Limited (in liquidation) (“**SIB**”), Peter Wastell and Nigel Hamilton-Smith (the “**Former Officeholders**”). I have knowledge of the information to which I hereinafter depose, except where my statements are of my information or belief, in which cases I have identified the source of that information or belief and I believe the statements to be true.

2. This affidavit is sworn for the purpose of addressing certain statements made in the affidavits of Wolfgang Mersch dated October 10, 2014 and February 13, 2015 respectively. This affidavit also supplements certain information provided in my First Affidavit, namely by

providing further details in respect of certain information regarding The Toronto-Dominion Bank (“**TD Bank**”) known by the Former Officeholders during the period commencing from their appointment as receiver-managers in February 2009 until August 22, 2009 (the “**Limitations Timeframe**”). This affidavit is subject to the same assumptions and conditions stated in my First Affidavit.

I. THE DYNASTY ACTIONS DISCLOSED NO ACT OR OMISSION

3. I have been provided by Maureen Ward of Bennett Jones LLP a copy of the affidavits of Wolfgang Mersch sworn October 10, 2014 and February 13, 2014 respectively and have reviewed both affidavits.

4. Paragraph 16 of Mr. Mersch’s first affidavit and paragraph 31 of Mr. Mersch’s second affidavit indicate that a “Norwich” application was pursued by five Canadian investors in certificates of deposit issued by SIB who are referred to as the “Dynasty Plaintiffs”. Mr. Mersch indicates that this application was originally commenced on April 17, 2009 in the province of Alberta before being later reinstated in the province of Ontario.

5. I believe the Former Officeholders were aware during the Limitations Timeframe that the Dynasty Plaintiffs had commenced a Norwich application against TD Bank, primarily via their Canadian counsel, the then named Ogilvy Renault LLP. However, I do not believe that the Former Officeholders concluded from this application that TD Bank may have acted or omitted to act in a manner that may have caused or contributed to any losses or damages that were suffered by SIB. So far as I am aware, the Former Officeholders believed that the application was to try to access information from third parties that may have innocently become involved with or facilitated another party’s potentially improper conduct. In my experience, due to their

central roles in their customers' financial affairs, banks often face applications of this information-seeking kind.

6. In preparing this affidavit, I have reviewed the Dynasty Group's pleading from its Norwich application, which is attached as Exhibit "M" to Mr. Mersch's first affidavit. That pleading confirms the comments above about the nature of Norwich applications. In particular, the pleading indicates that the purpose of the Norwich application was to access information necessary for the Dynasty Plaintiffs to pursue a claim against SIB and certain related companies and individuals. The pleading did not even allege that TD Bank acted in any way so as to fall below its particular set of obligations or the standard of care applicable to it during the period that it provided correspondent banking services to SIB, or provide any basis on which such a conclusion could be reached.

7. So far as I am aware, the Dynasty Plaintiffs' Norwich application was simply regarded by the Former Officeholders as one of hundreds of legal actions commenced by SIB's creditors and other interested parties around the world as a result of SIB's collapse.

II. THE STANDARD OF CARE AND BREACH OF THE STANDARD

8. My First Affidavit provides that, throughout the Limitations Timeframe, as far as I am aware the Former Officeholders could not determine of facts indicating that TD Bank may have caused or contributed to any losses or damages that were suffered by SIB. It also identifies certain specific facts that I do not believe were known by the Former Officeholders during the Limitations Timeframe and notes that, without knowledge of such facts, the Former Officeholders could not determine that any act or omission of TD Bank may have caused or contributed to the losses or damages that appeared to have been suffered by SIB.

9. During the Limitations Timeframe, I do not believe that the Former Officeholders knew of any information concerning the existence or content of the customs, industry practices or statutory or regulatory standards applicable to TD Bank throughout the period that it provided correspondent banking services to SIB. In this regard, I note the following:

- (a) I am advised by Ms. Ward that TD Bank is a Canadian Schedule I bank duly constituted by letters patent under the authority of the Canadian *Bank Act*, R.S.C., c. 46;
- (b) Throughout the Limitations Timeframe, I do not believe that the Former Officeholders had any knowledge of the customs, industry practices or statutory or regulatory standards that applied to a Canadian Schedule I bank or to the provision of correspondent banking services during the 20-year period that TD Bank provided such services to SIB, whether those customs, practices or standards derived from Canada, international bodies or otherwise;
- (c) So far as I am aware, throughout the Limitations Timeframe, while the Former Officeholders sought and obtained extensive advice on the multitude of tasks they were undertaking around the world, they did not receive any report, guidance or advice from any professionals or experts as to the customs, industry practice or statutory or regulatory standards applicable to TD Bank during the period that it provided correspondent banking services to SIB, whether generally or specifically in respect of correspondent banking; and
- (d) The focus in Canada for the Former Officeholders was to seek recognition in Canada as the proper officeholders to represent SIB in Canadian matters, as

opposed to Ralph Janvey, the US Receiver. Justice Auclair denied the Former Officeholders' motion in that regard which was filed on April 22, 2009, by his judgment delivered on September 11, 2009.

10. Accordingly, throughout the Limitations Timeframe, as far as I am aware, the Former Officeholders had no knowledge of the particular set of obligations owed by, or the content of the standard of care applicable to, TD Bank in respect of its provision of correspondent banking services to SIB.

11. Without knowledge of the particular set of obligations owed by, or the content of the standard of care applicable to, TD Bank in respect of its provision of correspondent banking services to SIB, I do not believe that the Former Officeholders could have determined whether any act or omission of TD Bank may have caused or contributed to any losses or damages that appeared to have been suffered by SIB. Further, I am not aware that the Former Officeholders were aware of anything egregious or blatantly wrong with TD Bank's provision of such services. In this regard, I note the following:

- (a) I believe that the Former Officeholders' understanding during the Limitation Timeframe, the provision of correspondent banking services by a Canadian Schedule I bank (such as TD Bank) to an Antiguan offshore bank (such as SIB) is a type of banking service that is wholly distinct from normal, everyday personal or commercial banking practices familiar to the Former Officeholders;
- (b) I am not aware that during the Limitations Timeframe, the Former Officeholders were aware that TD Bank was the subject of any regulatory or legal complaints, investigations or charges in connection with its provision of correspondent

banking services to SIB and, in fact, my understanding is that no such complaints, investigations or charges have ever taken place;

- (c) Without any knowledge of the particular set of obligations owed by, or the content of the standard of care applicable to, TD Bank during the period that it provided correspondent banking services to SIB, I do not believe that the Former Officeholders would have known what information might indicate that TD Bank had acted or omitted to act in a manner contrary to such obligations or standard of care;
- (d) In turn, the Former Officeholders did not attempt to acquire, or actually acquire, information to indicate that TD Bank had acted or omitted to act in a manner contrary to its particular set of obligations or the applicable standard of care. For instance:
 - (i) As noted in my First Affidavit, the Former Officeholders did not conduct any archival internet or news media searching in respect of TD Bank's provision of correspondent banking services to SIB (§133(b)). In any event, absent any knowledge regarding the obligations of, or the standard of care applicable to, TD Bank during the period that it provided correspondent banking services to SIB, I do not believe that the Former Officeholders could have known or appreciated the significance of the results of any such searching, including whether TD Bank was required to obtain the information resulting from those searches or what TD Bank ought to have done with that information if it was obtained, and

- (ii) As further noted in my First Affidavit, so far as I am aware the Former Officeholders had no knowledge of information concerning what knowledge personnel internal to TD Bank may have obtained about SIB's affairs during the period that it provided correspondent banking services to SIB, or what TD Bank did or failed to do as a result of that knowledge (¶12). More generally, besides knowledge of the fact that TD Bank provided correspondent banking services and of certain day-to-day operational matters relevant thereto, the Former Officeholders did not have any knowledge of TD Bank's conduct vis-à-vis SIB; and
- (e) As also noted in my First Affidavit, it was not until after the Limitations Period that the Former Officeholders discovered the factual nature, extent and duration of the fraud that had been committed on SIB (¶28). Without information concerning at least the nature and duration of the fraud, it is difficult to imagine how the Former Officeholders could have determined which customs, industry practices or statutory or regulatory standards were relevant to TD Bank's conduct and, in turn, TD Bank's particular obligations, the applicable standard of care and whether TD Bank acted or omitted to act in a manner that caused or contributed to the losses that appeared to have been suffered by SIB.

12. For among the foregoing reasons, I confirm that, throughout the Limitations Timeframe, I do not believe that the Former Officeholders had knowledge of facts indicating that TD Bank may have caused or contributed to any losses or damages that were suffered by SIB.

MARCUS A. WIDE, et al.
Plaintiffs

v.

THE TORONTO-DOMINION BANK
Defendant

Court File No. CV-12-9780-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**THIRD AFFIDAVIT OF
PETER R. WILTSHIRE
(Sworn March 26, 2015)**

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