

089Court File No: CV-12-9780-00CL

**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

**SECOND AFFIDAVIT OF PETER R. WILTSHIRE  
(Sworn January 16, 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, 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**"). My involvement with the Former Officeholders and their efforts on behalf of SIB is discussed in my first affidavit at paragraphs 4 to 8. 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.

## I. TD BANK'S REQUEST FOR DOCUMENTS

2. I have been advised by Maureen Ward of Bennett Jones LLP that, on December 1, 2014, the plaintiffs in this action, Marcus A. Wide and Hugh Dickson (the "**Joint Liquidators**"), delivered a responding motion record containing the affidavit evidence in response to a motion by the defendant, The Toronto-Dominion Bank ("**TD Bank**"), arguing that the Joint Liquidators' claim is limitations barred. The Joint Liquidators responding record contains my first affidavit and affidavits sworn by Marcus A. Wide, Beverly M. Jacobs, Omari Osbourne, Ralph S. Janvey, William R. Tacon and John Carrington, QC, all of which I have been provided copies of by Bennett Jones LLP.

3. I have been advised by Ms. Ward and have reviewed emails indicating that, having reviewed the Joint Liquidators' responding motion record, TD Bank has made two requests for the production of further documents. The first such request by TD Bank was made on December 14, 2014 and provides as follows:

I write in follow-up to your discussion with Geoff on Friday to provide you with a list of some of the documents referred to in the various affidavits delivered on behalf of the plaintiffs. Kindly provide us with the following documents at your very earliest convenience:

1. The email from Ralph Janvey referred to in paragraph 87 of Ms. Jacobs' affidavit;
2. The email from Ralph Janvey referred to in paragraph 55 of Mr. Osbourne's affidavit;
3. Copies of the reports submitted to the FSRC referred to in paragraph 62 of Mr. Osbourne's affidavit;
4. All letters written by the Former Officeholders to third party financial institutions, as referred to in paragraph 63 of Mr. Osbourne's affidavit;

5. All responses from third party financial institutions, as referred to in paragraph 64 of Mr. Osbourne's affidavit;
  5. The emails referred to in paragraph 67 of Mr. Osbourne's affidavit; and
  6. All documents in the vault at SIB's headquarters, as referred to in paragraphs 62 and 68 of Mr. Osbourne's affidavit.
4. A copy of the email from TD Bank's counsel making the first request for production of further documents is attached as **Exhibit "A"** to this affidavit.
  5. TD Bank's second request for further documents was made on January 7, 2015 and, having provided a purported basis for requesting disclosure of certain previously-sworn affidavits, provides as follows:

These affidavits are clearly relevant to the issues on the summary judgment motion. Accordingly, we ask that you provide us with copies of the following affidavits, together with all exhibits thereto:

1. The affidavit of Peter Wastell sworn on February 26, 2009 in support of the appointment of a Receiver-Manager of SIB and Stanford Trust Company Limited (Claim No. ANUHCV 2009/0110);
2. The affidavit of Nigel Hamilton-Smith sworn on March 25, 2009 in support of the appointment of liquidators for SIB (Claim No. ANUHCV 2009/0149);
3. The affidavit of Nigel Hamilton-Smith sworn on April 21, 2009 in support of the Former Officeholders' application for recognition of the Antiguan liquidation proceedings in the UK High Court of Justice, Chancery Division, Companies Court;
4. The affidavit of Nigel Hamilton-Smith sworn in May, 2009 in support of the Former Officeholders' application for recognition of the Antiguan liquidation proceedings in the UK High Court of Justice, Chancery Division, Companies Court;
5. The affidavit(s) of Peter Wastell and/or Nigel Hamilton-Smith sworn in support of the application to the UK court for the removal of the civil

freezing order obtained over the UK assets of SIB by the SEC;

6. The affidavit(s) of Peter Wastell and/or Nigel Hamilton-Smith sworn in support of the application made by the Former Officeholders to the Central Criminal Court for the removal of the criminal restraint order;

7. All affidavits sworn by Marcus Wide and Hugh Dickson in support of their appointment as Liquidators for the SIB and Stanford Trust Company Limited (Claim No. ANUHCv 2009/ O149) (whether in Spring of 2011, as referred to in Exhibit "D" to the affidavit of Marcus Wide, or otherwise).

It has also come to our attention that, by letter dated March 6, 2009, you wrote to the Former Officeholders, advising of the putative class proceedings commenced against SIB by your firm. In your letter, you specifically noted: "As class counsel for the Canadian investors ... [the Former Officeholders] should contact [you] should there be any developments that affect or could affect the rights of the investors [you] represent." Kindly provide us with all correspondence (whether by letter, email or otherwise) between and amongst any members or representatives of your firm and the Former Officeholders and/or their representatives, legal or otherwise, between February 2009 and August 2011 (inclusive).

6. A copy of the email from TD Bank's counsel making the second request for production of further documents is attached as **Exhibit "B"** to this affidavit.

## **II. RESPONSE TO TD BANK'S REQUEST FOR DOCUMENTS**

### **A. Response to TD Bank's First Request for Documents**

7. Below is my response to TD Bank's request for documents of December 14, 2014.

#### ***Requested Items 1 and 2***

8. The first two items requested by TD Bank are:

- (a) **Item 1:** The email from Ralph Janvey referred to in paragraph 87 of Ms. Jacobs' affidavit; and
- (b) **Item 2:** The email from Ralph Janvey referred to in paragraph 55 of Mr. Osbourne's affidavit.

9. I am advised by Ms. Jacobs and Mr. Osbourne that paragraphs 87 and 55 of their respective affidavits describe the same email received by all SIB personnel from Mr. Janvey on February 17, 2009. I am further advised by Ms. Jacobs and Mr. Osbourne that, while they recalled this email at the time of swearing their affidavits, it was only subsequently that a copy of the email was located and reviewed by them. A copy of the email from Mr. Janvey dated February 17, 2009 is attached as **Exhibit "C"** to this affidavit.

***Requested Item 3***

10. The third item requested by TD Bank is:

- (a) **Item 3:** Copies of the reports submitted to the FSRC referred to in paragraph 62 of Mr. Osbourne's affidavit.

11. I have been advised by Mr. Osbourne that he identified and compiled copies of the reports of the Antigua Financial Services Regulatory Commission (the "**FSRC**") referenced at paragraph 62 of his affidavit. I have been further advised by Mr. Osbourne that it was only as of the fourth quarter of 2007 that the FSRC reports listed the names of financial institution (and therefore only the FSRC reports from that point forward are referenced in his affidavit) and that the final completed FSRC report was for the third quarter of 2008. Copies of the relevant FSRC reports have been provided to me and are attached as **Exhibit "D"** to this affidavit.

***Requested Items 4 and 5***

12. The fourth and fifth items requested by TD Bank are:

- (a) **Item 4:** All letters written by the Former Officeholders to third party financial institutions, as referred to in paragraph 63 of Mr. Osbourne's affidavit; and
- (b) **Item 5:** All responses from third party financial institutions, as referred to in paragraph 64 of Mr. Osbourne's affidavit.

13. As Mr. Osbourne details at paragraphs 63 and 64 of his affidavit, he was informed that the Former Officeholders corresponded with various financial institutions. However, as his affidavit makes clear, Mr. Osbourne was not directly involved in any such correspondence. Instead, such correspondence was by my firm, CMS Cameron McKenna LLP, on behalf of the Former Officeholders.

14. I have provided Bennett Jones LLP with what I believe are copies of all correspondence currently held by CMS Cameron McKenna LLP in respect of the Former Officeholders' mandate as receiver-managers and liquidators of SIB. I was subsequently advised by Ms. Ward that individuals at Bennett Jones LLP have undertaken a comprehensive search of such correspondence in an effort to locate and compile all available correspondence between the Former Officeholders and third party financial institutions or other businesses that were thought by the Former Officeholders to potentially hold assets of SIB. I am further advised that this search was informed, in part, by the chart attached at Exhibit "EE" to my first affidavit, which constitutes a contemporaneous record of my firm's correspondence with financial institutions on behalf of the Former Officeholders as at April 2009.

15. I have been provided with copies of all responsive correspondence identified and compiled by Bennett Jones LLP. While I did not review all of this correspondence in detail, I am advised by Ms. Ward that it constitutes all available correspondence between the Former

Officeholders and financial institutions or other businesses understood to potentially hold assets of SIB. All correspondence responsive to TD Bank's request identified by Bennett Jones LLP has been organized alphabetically and copies of such correspondence are attached as **Exhibit "E"** to this affidavit.

16. I note that in an effort to disclose as much relevant correspondence and related information as possible, certain memoranda or emails internal to CMS Cameron McKenna LLP have been included in the attached correspondence. In providing such memoranda or emails, I am not and have no intention of waiving any privilege of any kind in relation to my firm's representation of the Former Officeholders.

***Requested Item 6***

17. The sixth item requested by TD Bank is:

(a) **Item 6:** The emails referred to in paragraph 67 of Mr. Osbourne's affidavit.

18. Mr. Osbourne's affidavit provides the following at paragraph 67: "...I had occasional email correspondence with personnel from SFG who indicated that they had heard that funds had been located and were available to repay SIB's customers. In addition, all SIB employees also received an email from [Robert Allen] Stanford himself ensuring us that no fraud had been committed and that the necessary funds could still be accessed."

19. I have been advised by Mr. Osbourne that he has performed searches and is unable to locate the emails from SFG personnel referenced at paragraph 67 of his affidavit. I have been

advised by Mr. Osbourne that the email from Robert Allen Stanford referenced at paragraph 67 of his affidavit is the email is attached as **Exhibit "F"** to this affidavit.

*Requested Item 7*

20. The seventh item requested by TD Bank is:

- (a) **Item 7:** All documents in the vault at SIB's headquarters, as referred to in paragraphs 62 and 68 of Mr. Osbourne's affidavit.

21. As detailed in my first affidavit, I regularly attended at SIB's headquarters in Antigua following SIB's collapse. During these visits, I had limited personal involvement with the vault referred to at paragraphs 62 and 68 of Mr. Osbourne's affidavit. I did, however, go to the entrance of the vault and looked inside the vault. In addition, as a result of TD Bank's document request, I have spoken with Mr. Osbourne regarding the vault at SIB's headquarters, who has advised me as follows:

- (a) the vault consists of a separate room within the larger filing room at SIB's headquarters in Antigua;
- (b) the vault room is behind a fireproof door that has two locks each requiring a separate key;
- (c) within the vault room are various filing cabinets, all of which were also locked;
- (d) only a small number of individuals had access to the vault room throughout SIB's operations. Mr. Osbourne's understanding is that such individuals consisted of at least Robert Allen Stanford, James Milton Davis, the President of SIB and perhaps SIB's human resources manager. Mr. Osbourne did not have access to the vault; and



- (e) at the time of SIB's collapse and the subsequent appointment of the Former Officeholders as receiver-managers, Mr. Osbourne viewed within the vault but did not examine the records contained therein except for the few documents shown to him by the Former Officeholders (as referenced at paragraph 68 of Mr. Osbourne's affidavit). At that time, Mr. Osbourne observed that there were likely thousands of records contained within the vault.

22. I am advised by Mr. Osbourne that the records contained in the vault at the time of SIB's collapse have not been maintained in one place since that time and that, instead, those records have been moved throughout SIB's headquarters and other locations in order to be used as necessary for various steps in the liquidation over the years. Mr. Osbourne therefore advises that it is not now apparent which records were contained in the vault at the time of SIB's collapse.

23. Further, in addition to the millions of records maintained at SIB's headquarters at the time of its collapse (as detailed at paragraphs 107 and 108 of my first affidavit), while the Former Officeholders were in office, a significant volume of additional records were moved from an off-site storage facility to SIB's headquarters in order to further reduce SIB's overall operating costs. I have been provided with a copy of an invoice that appears to relate to this movement of records that Ms. Ward has advised was identified by Bennett Jones LLP in the Joint Liquidators' files. A copy of this invoice is attached as **Exhibit "G"** to this affidavit.

24. In these circumstances, it seems impossible to identify the documents from the vault. In any event, given the time, expense and effort that would be required to attempt to identify and compile the documents responsive to this request (if doing so is possible at all), this affidavit does not attach documents from the vault.

**B. Response to TD Bank's Second Request for Documents**

25. On January 7, 2015, TD Bank made its second request for documents. I have reviewed this request and note that the documents requested consist primarily of affidavits filed by the Former Officeholders.

26. I was involved to some degree with the preparation of each affidavit of the Former Officeholders requested by TD Bank. At the time of such preparation, I was aware of and agreed with the content of those affidavits. Prior to swearing my first affidavit in the within action, I continued to be aware of those affidavits and also specifically reviewed affidavits of Nigel Hamilton-Smith sworn on each of May 15, 2009 and June 24, 2009. As a result of TD Bank's second request for documents, I have now reviewed each affidavit of the Former Officeholders requested by TD Bank and confirm that nothing in those affidavits changes my knowledge, information or belief detailed in my first affidavit. Below is my response to TD Bank's request for documents of January 7, 2014.

***Requested Item 1***

27. The first item requested by TD Bank is:

- (a) **Item 1:** The affidavit of Peter Wastell sworn on February 26, 2009 in support of the appointment of a Receiver-Manager of SIB and Stanford Trust Company Limited (Claim No. ANUHCv 2009/0110).

28. A copy of the affidavit of Peter Wastell sworn February 26, 2009 is attached as **Exhibit "H"** to this affidavit.

*Requested Item 2*

29. The second item requested by TD Bank is:

- (a) **Item 2:** The affidavit of Nigel Hamilton-Smith sworn on March 25, 2009 in support of the appointment of liquidators for SIB (Claim No. ANUHCV 2009/O149).

30. A copy of the affidavit of Nigel Hamilton-Smith sworn March 25, 2009 is attached as **Exhibit "I"** to this affidavit.

*Requested Items 3, 4, 5 and 6:*

31. The third, fourth, fifth and sixth items requested by TD Bank are:

- (a) **Item 3:** The affidavit of Nigel Hamilton-Smith sworn on April 21, 2009 in support of the Former Officeholders' application for recognition of the Antiguan liquidation proceedings in the UK High Court of Justice, Chancery Division, Companies Court;
- (b) **Item 4:** The affidavit of Nigel Hamilton-Smith sworn in May, 2009 in support of the Former Officeholders' application for recognition of the Antiguan liquidation proceedings in the UK High Court of Justice, Chancery Division, Companies Court;
- (c) **Item 5:** The affidavit(s) of Peter Wastell and/or Nigel Hamilton-Smith sworn in support of the application to the UK court for the removal of the civil freezing order obtained over the UK assets of SIB by the SEC; and
- (d) **Item 6:** The affidavit(s) of Peter Wastell and/or Nigel Hamilton-Smith sworn in support of the application made by the Former Officeholders to the Central Criminal Court for the removal of the criminal restraint order.

32. Copies of all affidavits of the Former Officeholders delivered in respect of (i) their application for recognition of the Antiguan liquidation proceedings in the United Kingdom, (ii) their application for the removal of the civil freezing order obtained over the United Kingdom assets of SIB by the U.S. Securities and Exchange Commission, and (iii) their application to the

United Kingdom Central Criminal Court for the removal of a criminal restraint order are attached as **Exhibit "J"** to this affidavit.

33. An additional affidavit of Nigel Hamilton-Smith was sworn on June 24, 2009 and contains information similar to that provided in the aforementioned affidavits relied upon by the Former Officeholders in the United Kingdom, and which I reviewed prior to swearing my first affidavit. A copy of the affidavit of Nigel Hamilton-Smith sworn June 24, 2009 is attached as **Exhibit "K"** to my affidavit.

***Requested Item 7***

34. The seventh item requested by TD Bank is:

- (a) **Item 7:** All affidavits sworn by Marcus Wide and Hugh Dickson in support of their appointment as Liquidators for the SIB and Staniford Trust Company Limited (Claim No. ANUHCV 2009/ O149) (whether in Spring of 2011, as referred to in Exhibit "D" to the affidavit of Marcus Wide, or otherwise).

35. I have been provided copies of affidavits of the Joint Liquidators in support of their appointment as liquidators of SIB and Stanford Trust Company Limited and have been advised by Ms. Ward that these are the affidavits responsive to TD Bank's request. Copies of these affidavits of the Joint Liquidators are attached as **Exhibit "L"** to this affidavit.

***Requested Item 8***

36. The final item requested by TD Bank is:

- (a) **Item 8:** [A]ll correspondence (whether by letter, email or otherwise) between and amongst any members or representatives of [Bennett Jones LLP] and the Former Officeholders and/or their representatives, legal or otherwise, between February 2009 and August 2011 (inclusive).

37. I am advised by Ms. Ward that individuals at Bennett Jones LLP undertook a comprehensive search of both the records of Bennett Jones LLP and those provided to it by CMS Cameron McKenna LLP in order to identify and compile all available correspondence between Bennett Jones LLP and the Former Officeholders and/or their representatives, legal or otherwise, between February 2009 and August 2009, the period I understand is relevant to TD Bank's limitations motion. Bennett Jones LLP has provided me with copies of all correspondence identified in this search and these copies are attached as **Exhibit "M"** to this affidavit.

38. I note that TD Bank's second request for documents refers specifically to a letter of Bennett Jones LLP to the Former Officeholders dated March 6, 2009. That letter (which is attached) indicates that clients of Bennett Jones LLP had commenced a class action in Canada against SIB, its affiliated companies and certain senior personnel.

39. The letter of Bennett Jones dated March 6, 2009 to the Former Officeholders simply advised of one of many legal actions commenced against SIB in the months following its collapse. As noted in the Former Officeholders' report of March 16, 2009 (attached as Exhibit "H" of my first affidavit): "Due to the distress and panic caused by the freezing of SIB accounts under the order of the U.S. Court, law suits have been entered against SIB in a number of jurisdictions including the U.S. and Canada." Similarly, I note that paragraph 15 of the affidavit of Ralph S. Janvey contained in the Joint Liquidators' responding motion record provides:

Various other tasks also needed to be undertaken by the Receivership Team. For example, in just the first three months of the Receivership, more than 400 individuals and entities filed a total of over sixty five motions in the SEC's lawsuit from which the Receivership originated. In addition, more than twenty new lawsuits were filed in various other federal and state courts in direct contravention of the U.S. Court's injunction preventing such lawsuits...

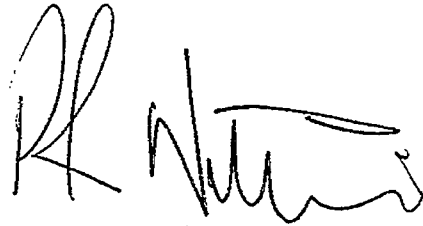
40. I further note that, consistent with paragraph 12 of my first affidavit, neither Bennett Jones LLP's letter of March 6, 2009 nor any other of its letters to the Former Officeholders at any time referred to any claim or information concerning what knowledge personnel internal to TD Bank obtained about SIB's affairs during the period that it provided corresponding banking services to SIB or concerning what TD Bank did or failed to do as a result of that knowledge.

SWORN before me at the City of London, in )  
the United Kingdom, this 16<sup>th</sup> day of )  
January, 2015. )

A. Greenfield

AARON GREENFIELD

A Commissioner, notary, solicitor etc.



PETER R. WILTSHIRE