

CANNA INVESTOR

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CANADA

MAGAZINE

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(CSE: PILL)

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COMMERCIAL CANNABIS LET THE GAMES

WHITNEY ABRAMS,
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IS LITIGATION: BEGIN



On May 17, 2018, Gilla Inc (“Gilla”), a designer, marketer and manufacturer of e-liquid for vaporizers and developer of cannabis concentrate products, announced its plan to pursue a spin-off of its cannabis related business to its shareholders. The plan was to spin out its cannabis-

related assets through one of its wholly owned subsidiaries located in Ontario, Hystyle Brands (“Hystyle”). Hystyle is the subsidiary that Gilla uses to manufacture and distributed its hemp-derived CBD products in the United States and throughout Europe.

Shortly thereafter, Beau Lakhani, Anthony and Andrew Diab, the former owners of Vape Brands International Inc. (“Vape Brands”), a manufacturer of e-liquids for e-cigarettes commenced a litigation. So, what do these gentlemen have to do with Gilla’s operations?

Lakhani, Diab and Diab were the owners of Vape Brands.

A Mareva injunction is an injunctive order that restrains a party from dissipating assets or from conveying away his or her own property pending the determination in the proceedings. It is known to be an extraordinary remedy not typically granted by Courts and there is a high bar for obtaining such an order. To obtain such an order, a party must satisfy a five-part test.

In the summer of 2017, they sold the company to Gilla pursuant to a Share Purchase Agreement. Prior to the sale, Lakhani, Diab and Diab owned all the common shares of Vape Brands. Lakhani owned 70%, and the Diabs each owned 15% of the remaining shares. These shares were sold to Gilla.

Gilla now alleges that they were fraudulently induced to purchase Vape Brands based on misrepresentations by Lakhani and the Diabs about the resources, infrastructure, and capabilities of Vape Brands as well as the financials of the company. Vape Brands was financially unsuccessful after Gilla's purchase.

At the time that Gilla issued its press release announcing Hystyle and its plans to spin-off Gilla's cannabis-related business through another subsidiary, Vape Brands was still struggling.

Lakhani and the Diabs commenced an action in July, 2018 against Vape Brands, Gilla, and the principals of those companies for a number of causes of action, including specific performance of the Share Purchase Agreement, and damages, among other things.

In February, 2019, Lakhani and the Diabs brought a motion for a Mareva injunction restraining Gilla from dissipating Vape Brands and an injunction restraining the spin-

-off of the cannabis-business to Hystyle. A Mareva injunction is an injunctive order that restrains a party from dissipating assets or from conveying away his or her own property pending the determination in the proceedings. It is known to be an extraordinary remedy not typically granted by Courts and there is a high bar for obtaining such an order. To obtain such an order, a party must satisfy a five-part test. In this case, on March 18, 2019, Justice Perell's decision was that Lakhani and the Diabs did not satisfy the criteria for the Mareva injunction, which is unsurprising.

This does not mean that the litigation is over. Rather, it means is that the action will continue in the normal course.

Most of the (public) cannabis litigation to date (meaning, reported decisions) have been more human-rights focused. This case is one of the first reported decisions relating to the cannabis industry that is squarely within the realm of commercial litigation. With any new industry,

litigation takes time. This case certainly won't be the last for commercial cannabis litigation. We expect an onslaught of commercial cannabis litigation as the industry grows and matures and look forward to the way that will shape and further develop the Canadian cannabis industry.

A full copy of Justice Perell's decision is available on Canlii at <https://www.canlii.org/en/on/onsc/doc/2019/2019onsc1727/2019onsc1727.pdf>

If you are a retailer who requires assistance with respect to the development of compliant security measures and collection of personal information, please feel free to contact

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